SUPREME COURT OF THE UNITED STATES.

No. 88.

AMOS KENDALL, PLAINTIFF IN ERROR,

vs.

WM. B. STOKES, LUCIUS W. STOCKTON, AND DANIEL MOORE, SURVIVORS OF RICHARD C. STOCKTON.

IN ERROR TO THE CIRCUIT COURT U. S. FOR WASHINGTON, D. C.

INDEX.

	Original.	Print.
Writ of error	5	3
Citation	7	3
Copy of appeal bond	9	4
Style of court	11	4
Parties	11	5
Capias ad respondendum	12	5
Nar.	13	5
Marshal's return and defendants' appearance	29	12
Rule plea and not guilty	30	13
Issue joined and venire facias	31	14
Jury	32	14
Verdict for plaintiffs	33	15
Damages	33	15
Motion in arrest of judgment	33	15
Motion to enter verdict on 1st and 5th counts of the declaration	34	15
Motion in arrest overruled, and judgment entered on 1st and 5th counts	34	15
Judgment for defendant on nolle prosequi, on 2d, 3d, and 4th counts	35	16
Exceptions by defendant to judgment	35	16
Motion to arrest judgment on 1st and 5th counts	36	17
Certificate of the jury	37	17
Defendant's 1st bill of exceptions	39	17
Do. 2d do do	48	22
Do. 3d do do	57	26
Transcript record in mandamus case, referred to in def't's 1st exception	59	27
Virgil Maxcy's (Solicitor of the Treasury) report to Congress, dated 26th December, 1836, and referred to in defendant's 1st bill of exceptions	95	42
Papers, from No. 1 to No. 25, referred to in def't's 1st bill of exceptions	419	193

J. & G. S. Gideon, Printers.

	Original.	Print.
Deposition of Gen'l Jackson, referred to in defendant's 2d exception -	487	227
Deposition of Martin Van Buren, referred to in defendant's 2d exception	505	234
Deposition of Benj'n F. Butler, referred to in def't's 2d exception -	525	242
Copy of a letter from Postmaster General to Attorney General, marked *a* 1, referred to in defendant's 2d exceptions - - - - -	537	248
Do do do do do do marked *b* 1,	569	261
Opinion of B. F. Butler, Attorney General of United States, marked *c* 1, referred to in defendant's 2d exceptions - - - - -	577	265
Letters from defendant to plaintiffs, May 11th, 1835, to June 4th, 1836, inclusive, referred to in defendant's 2d bill of exceptions, marked *d* 1	623	285
Copy of a letter from hon'ble Virgil Maxcy, Solicitor of the Treasury of the United States, to hon'ble Amos Kendall, Postmaster General of the United States, referred to in def't's 2d bill of exceptions, marked *e* 1 -	631	289
Copy of bills of expenses and losses, referred to in defendant's 3d bill of exceptions, marked A. - - - - - - -	633	290
Reverdy Johnson and John Glenn's receipts for moneys paid them, and referred to in defendant's 3d bill of exceptions, marked B. - -	635	291
Travelling expenses of Lucius W. Stockton, referred to in defendant's 3d bill of exceptions, marked C. - - - - - -	637	292
National hotel expenses, referred to in defendant's 3d bill of exceptions, marked D. - - - - - - - - -	638	293
Appeal to Supreme Court U. States - - - - - -	642	295
Clerk's certificate and seal - - - - - - -	642	295

DISTRICT OF COLUMBIA, *to wit:*

[L. S.] The United States of America, to the judges of the circuit court of the United States for the District of Columbia, sitting for the county of Washington, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court before you, or some of you, between William B. Stokes, Lucius W. Stockton, and Daniel Moore, surviving partners of Richard C. Stockton, plaintiffs, and Amos Kendall, defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears. We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your hand, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of August next, in the said Supreme Court to be then and there held; and that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court.

Issued this 21st day of October, 1842.

W. BRENT,
Clerk Ct. Ct. Wash. county, D. C.

Citation.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to William B. Stokes, Lucius W. Stockton, and Daniel Moore, surviving partners of Richard C. Stockton, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the District of Columbia, in the county of Washington, wherein Amos Kendall is plaintiff in error, and you are defendants in error, to shew cause, if any there be, why judgment rendered against the said Amos Kendall, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the honorable W. Cranch, chief judge of the circuit court of the District of Columbia, this fifteenth day of October, 1842.

W. CRANCH.

Copy appeal bond.

Know all men by these presents, that we, Amos Kendall and John T. Sullivan, are held and firmly bound unto William B. Stokes, Lucius W. Stockton, and Daniel Moore, who have survived Richard C. Stockton, in the full and just sum of five hundred dollars, to be paid to the said William B. Stokes, Lucius W. Stockton, and Daniel Moore, survivors of Richard C. Stockton, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this fifteenth day of October, in the year of our Lord one thousand eight hundred and forty-two.

Whereas lately, at a circuit court of the United States for the District of Columbia, sitting for the county of Washington, in a suit pending in the said court, wherein the said William B. Stokes, Lucius W. Stockton, and Daniel Moore, survivors of Richard C. Stockton, were plaintiffs, and the said Amos Kendall was defendant, judgment was rendered against the said defendant, and he having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said plaintiffs, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of January next.

Now the condition of the above obligation is such, that if the said Amos Kendall shall prosecute his said writ to effect, and answer all damages and costs, if he fails to make his plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue.

AMOS KENDALL, [SEAL.]
JOHN T. SULLIVAN. [SEAL.]

Signed, sealed, and delivered in the presence of
H. H. DENT.

Approved, W. CRANCH.

Style of Court.

DISTRICT OF COLUMBIA, *to wit:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, being the twenty-eighth day of the same month, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-sixth.

Present, the honorable William Cranch, chief judge; Buckner Thruston and James S. Morsell, assistant judges; Alexander Hunter, esq., marshal; William Brent, clerk.

In the records of the proceedings of the said court, among others, are the following, to wit:

Parties.

WILLIAM B. STOKES, LUCIUS W. STOCKTON, and DANIEL MOORE, survivors of Richard C. Stockton,
vs.
AMOS KENDALL.

Be it remembered that heretofore, to wit, on the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and thirty-nine, the aforesaid plaintiffs, by Richard S. Coxe, esq., their attorney, prosecuted and sued forth out of the circuit court here the United States writ of capias ad respondendum, to the marshal of the district aforesaid directed, in the words and of the tenor following, to wit:

Capias ad respondendum.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to the marshal of the district of Columbia, greeting:

We command you, that you take Amos Kendall, late of Washington county, if he shall be found within the county of Washington, in your said district, and him safely keep, so that you have his body before the circuit court of the District of Columbia, to be held for the county aforesaid, at the city of Washington, on the fourth Monday of November next, to answer unto William B. Stokes, Lucius W. Stockton, and Daniel Moore, who have survived Richard C. Stockton, deceased, in a plea of trespass in the case, and so forth. Hereof fail not at your peril, and have you then and there this writ.

Witness William Cranch, esq., chief judge of our said court, at the city of Washington, the 5th day of August, anno domini 1839.

R. S. COXE.

Issued 24th day of October, 1839.

WILLIAM BRENT, *Clerk.*

And the aforesaid plaintiffs, by their attorney aforesaid, in the day of prosecuting and suing forth of the aforegoing writ, declared against the said defendant in the plea aforesaid, in the form following, to wit:

Nar.

DISTRICT OF COLUMBIA,
Washington county, ss:

Amos Kendall, late of the county of Washington aforesaid, was attached to answer unto William B. Stokes, Lucius W. Stockton, and Daniel Moore, who have survived Richard C. Stockton, deceased, of a plea of trespass on the case, &c. Whereupon the said

p'aintiffs, by Richard S. Coxe, their attorney, complain, for that whereas, heretofore, to wit, on the first day of March, in the year eighteen hundred and thirty-five, at the county aforesaid, the said plaintiffs and Richard C. Stockton, whom they have survived, under and in the name of the said Richard C. Stockton, were contractors for carrying the mail of the United States, under and by virtue of certain contracts and additional contracts made and entered into by and between them, the said plaintiffs, and the said Richard C. Stockton, in his lifetime, in the name of the said Richard C. Stockton and the Postmaster General of the United States, thereunto lawfully authorized; and whereas the said plaintiffs and the said Richard, in his lifetime, did perform the duties and services by them contracted and stipulated to be performed, and certain other extra services so by them as aforesaid contracted to be performed; and for and by reason of such performance had earned, and were justly entitled to receive for the same, allowance and payment of large sums of money, amounting to the sum of one hundred and twenty-two thousand dollars, lawful money of the United States; and whereas, in consideration of such performance of said services, a certain William T. Barry, then Postmaster General of the United States, did, in conformity with the law, usage, and practice in such cases prevailing, cause credits to be given, allowed, and entered in the books, accounts, and proper papers in the Post Office Department, in favor of said plaintiffs and said Richard C. Stockton, in his lifetime, in and under the name of the said Richard, for divers large sums of money, amounting to the sum of one hundred and twenty-two thousand dollars, to wit, on the day and year aforesaid, at the county aforesaid; and whereas, afterwards, to wit, on the first day of May, in the year aforesaid, at the county aforesaid, the said Amos Kendall was duly appointed Postmaster General of the United States, and assumed upon himself the duties of his said office, and became bound to perform and execute the duties belonging and appertaining to the same; and whereas, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, the same Amos Kendall, so being Postmaster General as aforesaid, in nowise regarding the duties of his said office, but contriving and intending wrongfully, illegally, maliciously, and oppressively to injure and aggrieve the said plaintiffs and the said Richard, in his lifetime, in the premises, did wrongfully, illegally, maliciously, and oppressively, and against the will and consent of the said plaintiffs and the said Richard, in his lifetime, and of each and every of them, cause the said items of account so entered, and credited, and allowed as aforesaid, and upon which payments had as aforesaid been made to them, to be suspended on the books, accounts, and papers of said Post Office Department, and did cause the said Richard C. Stockton, so acting for and representing himself and the said plaintiffs, to be charged on said books, accounts, and papers, with the said several items and sums of money, so as

aforesaid allowed, credited, and paid as aforesaid. By means of which said premises it was most unjustly, untruly, unlawfully, maliciously, and oppressively made to appear on the said books, accounts, and papers of said department, that the said Richard and the said plaintiffs had been overpaid beyond what they had in fact earned, and beyond what was justly their due and right, a large sum of money, to wit, the said sum of one hundred and twenty-two thousand dollars; whereas, in fact and in truth, they were not, nor were any or either of them, so indebted, nor had they, or either or any of them, been so overpaid. And the said plaintiffs aver, that they and the said Richard, in his lifetime, by reason of such untrue and illegal appearance of indebtment, thus falsely, maliciously, and unlawfully created, were unable to procure and obtain, from the said Post Office Department, large sums of money which they from time to time earned, were allowed, and became entitled to receive, for other services rendered by them as such contractors, and were refused payment of large sums of money so by them from time to time earned, and were subjected to great losses in raising funds to enable them to perform their said contracts for carrying the mail, and for other purposes, and to great expenses, labor, anxiety, and distress of mind in consequence thereof, and in obtaining payment of such sums of money so as aforesaid due to them, and suffered greatly in their credit and business, and suffered great losses in complying with their engagements and contracts, as well with the said Post Office Department as with divers citizens of the United States, viz: on the first day of January, eighteen hundred and thirty-six, at the county aforesaid, and then and there suffered other wrongs and injuries to the damage of the said plaintiffs and the said Richard one hundred thousand dollars; and thereof the said plaintiffs, survivors as aforesaid, bring suit, &c.

And whereas also, to wit, on the first day of May, in the year eighteen hundred and thirty-five, at the county aforesaid, the said Amos Kendall was Postmaster General of the United States, and as such postmaster, without any lawful power or authority so to do, did, unlawfully and maliciously, cruelly and oppressively, charge the said plaintiffs, and the said Richard C. Stockton, whom they have survived, in his lifetime, then being contractors for carrying the mail of the United States, upon the books, accounts, and papers of the Post Office Department, with a large sum of money, which, before that time, [had] been allowed them on said books, papers, and accounts, by the proper authority of said department, and did suspend in their accounts with said department the various items amounting to the sum of one hundred and twenty-two thousand dollars from the credit of said plaintiffs and said Richard, in his lifetime, whereby the said plaintiffs and the said Richard, in his lifetime, were falsely and illegally made to appear on said books, papers, and accounts, as largely indebted to the said department, when in truth and in fact they were not so indebted, or, if at all,

only in a small amount. By reason of which unlawful, malicious, oppressive, and cruel conduct of said Amos Kendall, the said plaintiffs and the said Richard lost credit with divers good citizens of the United States—were subjected to heavy expenses, and made to sustain great losses in the performance of their contracts and engagements, as well with the Post Office Department as with said citizens of the United States—were compelled to suffer great expense and labor, and distress of mind, and suffering, in order to obtain payment for services rendered by them as contractors as aforesaid in the carrying the mail—were unable to obtain and were refused payment of large sums of money actually earned by them as such contractors for the performance of other like services, and other wrongs and injuries suffered, to wit, at the county aforesaid, on the day last aforesaid, to their damage, other one hundred thousand dollars; and thereof the said plaintiffs, who have survived the said Richard, bring suit, &c.

3. And whereas, afterwards, to wit, on the first day of November, in the year one thousand eight hundred and thirty-six, at the county aforesaid, the said plaintiffs and the said Richard C. Stockton, in his lifetime, under and by virtue of certain other contracts for carrying the mail of the United States, so made as aforesaid, and for other extra services by them rendered in and about the same, had earned other large sums of money, amounting to the sum of $122,000, which sums by them so earned, the said plaintiffs and the said Richard, in his lifetime, were entitled to ask, demand, and receive from the said Post Office Department as aforesaid, and which the said department was bound by law to pay to them, and which the said *department*, then being the Postmaster General as aforesaid, was, as such Postmaster General, bound by law to pay or cause to be paid to them, out of the funds applicable by law to the service of such department. Yet the said Amos Kendall, so being Postmaster General as aforesaid, in nowise regarding the duties and obligations of his said office, the laws of the lands, or the rights of the said plaintiffs and the said Richard in this behalf, but contriving, and unjustly, illegally, and oppressively intending to injure, aggrieve, and oppress the said plaintiffs and the said Richard, in his lifetime, in this behalf, did afterwards, to wit, on the day and year aforesaid, at the county aforesaid, illegally, unjustly, oppressively, and contrary to his duty and obligation as Postmaster General as aforesaid, omit, neglect, and refuse, and for a long space of time, to wit, a space of two years, did omit, neglect, and refuse to pay, or cause to be paid, to the said plaintiffs and the said Richard, or any or either of them, the said sums of money, or any part thereof, whereby the plaintiffs say that they and the said Richard, in his lifetime, sustained damage to the amount of other one hundred thousand dollars; and thereof they, the said plaintiffs, bring suit, &c.

4. And whereas also, on the second day of July, in the year eighteen hundred and thirty-six, at the county aforesaid, the Sen-

ate and House of Representatives of the United States in Congress assembled, did pass a certain act of Congress for the relief of the said plaintiffs and the said Richard C. Stockton, in his lifetime, entitled "An act for the relief of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore," in and by which said act it was, among other things, enacted and provided that the Solicitor of the Treasury be, and he is hereby, authorized and directed to settle and adjust the claims of William B. Stokes and Richard C. Stockton, of Maryland, Lucius W. Stockton and Daniel Moore, of Pennsylvania, for extra services performed by them as contractors for carrying the mail under and by virtue of certain contracts therefor, by them alleged to have been made and entered into with them by William T. Barry, late Postmaster General of the United States; and for this purpose to inquire into and determine the equity of the claims of them, or of any of them, for or on account of any contract or additional contract with the said Postmaster General, in which their pay may have been suspended by the present Postmaster General, and to make them such allowances therefor as, upon a full examination of all the evidence, may seem right according to the principles of equity; and that the said Postmaster General be, and he is hereby, directed to credit such mail contractors with whatever sum or sums of money, if any, the said solicitor shall so decide to be due to them for or on account of any such service or contract.

And the said plaintiffs in fact aver, that they and the said Richard C. Stockton, in his lifetime, under the name and style of Richard C. Stockton, before that time were contractors for carrying the mail, and had claims for extra services performed by them, as contractors for carrying the mail, under and by virtue of certain contracts therefor made and entered into with them by William T. Barry, late Postmaster General of the United States, on which their pay had been suspended by the said Amos Kendall, the then present Postmaster General, and that they the said plaintiffs and the said Richard C. Stockton, whom they have survived, were and are the persons mentioned in, and intended to be provided for, by said act of Congress; and further, they in fact say, that Virgil Maxcy, then and there being the Solicitor of the Treasury, did assume upon himself the performance and discharge of the duties and powers so granted to, and conferred upon him, in and by said act of Congress, and did fully, justly, and truly perform and fulfil the same; and particularly did settle and adjust the claims of said plaintiffs and said Richard, for extra services performed by them, as contractors for carrying the mail, under and by virtue of certain contracts therefor made and entered into with them by the said William T. Barry, late Postmaster General of the United States, and did inquire into and determine the equity of the claims of the said plaintiffs and the said Richard, for and on account of certain contracts, and additional contracts, with the said William T. Barry, the late Postmaster General,

on which the pay of the said plaintiffs and the said Richard had been suspended by the said Amos Kendall, the then present Postmaster General; and in pursuance and execution of the power, authority, and duty created and conferred upon him, the said Virgil Maxcy, Solicitor of the Treasury, he, the said Virgil, then and there being the Solicitor of the Treasury aforesaid, and did afterwards, to wit, on the 12th day of November, in the year eighteen hundred and thirty-six, and on the 23d of November, in the same year, at the county aforesaid, determine and adjudge upon the equity of said claims, and did make to the [said] Richard C. Stockton, so representing himself, and the said plaintiffs, allowances therefor in divers large sums of money, amounting to the sum of one hundred and sixty-two thousand seven hundred and twenty-seven dollars and five cents; of all which premises, the said defendant then and there had notice, whereby, and by reason of said premises, it became and was the duty of the said defendant, as Postmaster General as aforesaid, to credit the said plaintiffs and Richard, in his lifetime, or the said Richard, so as aforesaid representing himself, and said plaintiffs, with the said sum of $112,727 05, as in and by said act of Congress he was directed and required to do; but the said defendant, in nowise regarding the provisions of the said law, or the duties and obligations of his office of Postmaster General, or the rights of the said plaintiffs and the said Richard in that behalf, illegally and unjustly, cruelly and oppressively, omitted, neglected, and refused to give or cause to be given such credit as aforesaid, to wit, on the days last aforesaid at the county aforesaid, and omitted, neglected, and refused to execute, perform, and fulfil the duty, obligation, and authority, imposed and conferred upon him by said act of Congress, to the damage and injury of the said plaintiffs and the said Richard C. Stockton, in the lifetime of the said Richard and of the said plaintiffs, since the death of the said Richard, other one hundred thousand dollars; and thereof the said plaintiffs bring suit, &c.

And whereas, also, on the second day of July, in the year eighteen hundred and thirty-six, at the county aforesaid, the Senate and House of Representatives of the United States, in Congress assembled, did enact and pass a certain act of Congress for the relief of the said plaintiffs and the said Richard C. Stockton, in his lifetime, entitled "An act for the relief of Wm. B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore," in and by which said act of Congress, it was among other things enacted and provided that the Solicitor of the Treasury be, and he is hereby authorized and directed, to settle and adjust the claims of William B. Stokes and Richard C. Stockton, of Maryland, and Lucius W. Stockton and Daniel Moore, of Pennsylvania, for extra services performed by them as contractors for carrying the mail, under and by virtue of certain contracts therefor, by them alleged to have been made and entered into with them by William T. Barry, late Postmaster General of the United States, and for this purpose to inquire

into and determine the equity of the claims of them, or any of them, for or on account of any contract, or additional contract, with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make them such allowances therefor, as upon a full examination of all the evidence may seem right, according to the principles of equity; and that the Postmaster General be, and he is hereby, directed to credit such mail contractors with whatever sum, or sums of money, if any, the said solicitor shall so decide to be due to them, for or on account of any such service or contract.

And the said plaintiffs in fact aver, that they and the said Richard, in his lifetime, under the name and style of Richard C. Stockton, before that time were contractors for carrying the mail, and had claims for extra services performed by them, as contractors for carrying the mail, under and by virtue of certain contracts therefor made and entered into with them by William T. Barry, late Postmaster General, on which their pay had been suspended by the said Amos Kendall, the then Postmaster General; and that they, the said Richard and the said plaintiffs, were and are the persons mentioned in, and intended to be provided for by, said act of Congress.

And further, they in fact say, that Virgil Maxcy, then and there being the Solicitor of the Treasury, did assume upon himself the performance of the duties and powers so granted and conferred upon him, in and by said act of Congress, and did fully, justly, and truly, perform and fulfil the same; and particularly, did settle and adjust the claims of said plaintiffs and said Richard, for extra services performed by them as contractors for carrying the mail, under and by virtue of certain contracts therefor made and entered into with them by the said William T. Barry, late Postmaster General of the United States; and did inquire into, and determine, the equity of the claims of the said plaintiffs and the said Richard, for and on account of certain contracts, and additional contracts, with the said William T. Barry, the late Postmaster General, on which the pay of the said plaintiffs and the said Richard had been suspended by the said Amos Kendall, the then Postmaster General; and in pursuance, execution, and fulfilment of the power, authority, and duty created and conferred upon him, the said Virgil Maxcy, then and there being the Solicitor of the Treasury as aforesaid, and did afterwards, viz: on the twelfth day of November, in the year eighteen hundred and thirty-six, and on the twenty-third of November, in the same year, at the county aforesaid, determine and adjudge upon the said claims, and did make to the said Richard C. Stockton, so representing and acting for himself and the said plaintiffs, allowances therefor in divers large sums of money, amounting to the sum of one hundred and sixty-two thousand seven hundred and twenty-seven dollars and five cents; of all which premises, the said Amos Kendall, so being Postmaster General as aforesaid, then and there had notice, whereby, and *and* by reason of said premises, it became and

was the duty of the said defendant, as Postmaster General as aforesaid, under the authority and direction of the said act of Congress, to credit the said plaintiffs and the said Richard C. Stockton, in his lifetime, with the said sum of one hundred and sixty-two thousand seven hundred and twenty-seven dollars and five cents, as, in and by said act of Congress, he was directed and required to do; nevertheless, the said Amos Kendall, so being Postmaster General as aforesaid, in nowise regarding the provisions and directions of the said act of Congress, or the duties and obligations of his said office of Postmaster General; or the rights of the said plaintiffs and the said Richard in this behalf, illegally and unjustly, maliciously, tyranically, cruelly, and oppressively, in contempt of the law and of the Congress of the United States, in violation of his duty, and in disregard of the rights of the said plaintiffs and the said Richard, omitted, neglected, and refused, although thereto often requested, to credit, or to give, or cause to be given, to the said plaintiffs and said Richard, credit for the said sum, which the said solicitor had so decided to be due to them, for and on account of the services and contracts aforesaid—but illegally and unjustly, maliciously, tyranically, and oppressively, in contempt of the law and of the Congress of the United States, in violation of his duty, and in disregard of the rights of the said plaintiffs and the said Richard C. Stockton, in his lifetime, omitted, neglected, and refused to execute, perform, and fulfil the duty, obligation, direction, and requirement created, imposed, and conferred upon him, as Postmaster General, and contained and expressed in said act of Congress as aforesaid; by reason of all which premises, the law and injunctions of said act of Congress were contemned, violated, disregarded, and set at nought, the rights of the said plaintiffs and the said Richard trampled upon, the power of defendant's said office of Postmaster General abased and perverted, its duties neglected, the plaintiffs and said Richard, for a long period of time, kept out of money justly and legally due to them, they subjected to great losses and sacrifices, their credit impaired, their feelings outraged, they compelled to undergo a long, tedious, and expensive litigation to vindicate their rights, thus unlawfully, maliciously, tyranically, and oppressively withheld, great labor, fatigue, anxiety, and distress of mind imposed upon them, and other wrongs and injuries then and there suffered and sustained by them, the said plaintiffs and the said Richard, in his lifetime, to the extent of other one hundred thousand dollars; and thereof the said plaintiffs, survivors as aforesaid, bring suit, &c.

RICHD. S. COXE, *for Plaintiffs.*

Nov. term, 1839.—*Plaintiff's appearance.*

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-nine, and the day of the return of the aforegoing writ, comes again into the circuit court here, the said plaintiffs by their attorney aforesaid; and the

marshal of the district aforesaid, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

Marshal's return.

"Cepi, copy nar. left.

A. HUNTER, *Marshal.*"

Defendant's appearance.

And the said defendant being called, appears in court here, by Walter Jones, esq., his attorney; and thereupon, on motion of the said plaintiffs by their attorney aforesaid, it is ordered by the court here, that the said defendant give special bail in the plea aforesaid, or in default thereof, be committed to the custody of the marshal of the district aforesaid; whereupon, a certain Francis P. Blair and Charles K. Gardiner, present here in court in their proper person, (with the consent of the said plaintiffs, by their attorney aforesaid,) undertake for the said defendant that in case the said plaintiffs shall recover judgment against him the said defendant in the plea aforesaid, or that the said defendant shall be therein legally convict, that then the said defendant shall pay the condemnation of the court thereupon, or render his body to the custody of the marshal of the district aforesaid in satisfaction therefor; or that they the said Francis P. Blair and Charles K. Gardiner.

Rule plea and imparlance to March term, 1840.

And thereupon, on motion of the said plaintiffs by their attorney aforesaid, it is ruled by the court here that the said defendant answer to the declaration aforesaid of the said plaintiffs in the plea aforesaid, or judgment by the court here will be entered against him in default thereof; and the said defendant, by his attorney aforesaid, defends the force and injury, when, &c., and prays leave of the court here to imparle until the fourth Monday of March next, and then to answer to the declaration aforesaid of the said plaintiffs in the plea aforesaid; and to him it is granted. The same day is given to the said plaintiffs also.

Appearance of parties.

At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and forty, to which said day the said defendant had leave to imparle, and then to answer the declaration aforesaid of the said plaintiffs in the plea aforesaid, comes again into the circuit court here, as well the said plaintiffs by their attorneys aforesaid, as the said defendant by his attorney aforesaid.

Not guilty and issue joined.

And the said defendant by his attorney aforesaid, as before, defends the force and injury, when, &c., and saith, that he is not

guilty in manner and form as the aforesaid plaintiffs above against him have complained, and thereof he puts himself upon the country, and the said plaintiffs by their attorney aforesaid, in like manner, &c.

Venire facias to November term, 1840.

Thereupon, let a jury thereon appear before the court here, on the fourth Monday of November next, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c., and the same day is given to the said parties then and there, and so forth.

Appearance and continuance to March term, 1841.

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and forty, comes again into the circuit court here, as well the said plaintiffs by their attorney aforesaid, as the said defendant by his said attorney; thereupon, further process, of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is continued until the fourth Monday of March next.

At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-one, to which said day the said cause was continued, comes again into the circuit court here, as well the said plaintiffs by their attorney aforesaid, as the said defendant by his attorney aforesaid; thereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, the said cause is further continued until the fourth Monday of November next.

November term, 1841.

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-one, to which said day the said cause was continued, comes again into the circuit court here, as well the said plaintiffs by their attorney aforesaid, as the said defendant by his said attorney; whereupon, for trying the issue aforesaid, it is ordered by the court here, that twenty persons from the pannel of petit jurors, returned to the court here by the marshal of the district aforesaid, be drawn by ballot, according to the act of Assembly in such case made and provided; and thereupon, twenty persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, thereupon the remaining twelve persons being called, come, to wit:

Jury—Verdict for plaintiffs—Damages.

1. Joseph S. Clarke,
2. Louis Beeler,
3. James Clephane,
4. Simeon Matlock,

5. Thomas Magill,
6. Edmund Brooke,
7. Alexander Borland,
8. Walter Clarke,
9. John E. Neale,
10. James Lusby,
11. Peter F. Bacon,
12. John P. Ingle,

who, being empannelled and sworn to say the truth in the premises, upon their oath do say, that the said defendant is guilty of the charges in manner and form as the aforesaid plaintiffs within against him have complained; and they assess the damages of the said plaintiffs, sustained by occasion thereof, to the sum of eleven thousand dollars current money, with interest from the seventeenth day of March, one thousand eight hundred and forty-two.

Motion in arrest of judgment.

Whereupon the said defendant, by his attorney aforesaid, appears, and prays of the court that judgment on the verdict aforesaid be arrested, and that judgment be rendered for defendant; because the plaintiffs' declaration aforesaid, and all and singular the several counts therein contained, do not set forth any sufficient cause and causes of action whereby to charge the defendant in the premises; and because the said declaration, and all or some one of the said counts therein contained, are wholly insufficient in form and substance.

Continuance curia advisare vult., to March term, 1842.

Whereupon, for that the court here are not advised to give their judgment of and upon the premises aforesaid, day therefore is further given to the said parties to hear thereof their judgment until the fourth Monday of March next, for that the court here as yet are not advised, &c.

And now, at this day, to wit, the said fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-two, comes again into the circuit court here, as well the said plaintiffs, by their attorney aforesaid, as the said defendant by his said attorney.

Motion to enter verdict on 1st and 5th counts.

Whereupon the said plaintiffs, by their attorney aforesaid, moved the court to enter the verdict upon the 1st and 5th counts of the declaration, and a *nolle prosequi* on the 2d, 3d, and 4th counts.

Motion in arrest of judgment overruled, and judgment on 1st and 5th counts—Damages—Interest—Costs.

Whereupon, all and singular the premises being here seen and fully understood, and after argument of counsel being heard, and mature deliberation being thereupon had, it is considered by the court here, that the motion of the defendant heretofore made by his attorney aforesaid to arrest the judgment of the court in the pre-

mises, be, and the same is hereby, overruled; and that, as to the 1st and 5th counts in the declaration, the aforesaid plaintiffs recover against the said defendant as well the sum of eleven thousand dollars, current money, their damages aforesaid, by the jurors aforesaid in form aforesaid assessed, to be sustained by reason of the charges so as aforesaid contained in the said 1st and 5th counts of the declaration aforesaid, with interest thereon from the seventeenth day of March, in the year of our Lord one thousand eight hundred and forty-two, as the sum of sixty-eight $\frac{67}{100}$ dollars by the court here unto them the said plaintiffs on their assent adjudged, for their costs and charges by them about their suit in this behalf laid out and expended.

Judgment on nolle prosequi on 2d, 3d, and 4th counts, for defendant.

And as to the 2d, 3d, and 4th counts in the declaration aforesaid, it is also considered by the court here, that the aforesaid plaintiffs take nothing by their writ and declaration aforesaid, but that they be in mercy, &c. for their false clamor, and that the said defendant go thereof without day.

Memorandum.—After the rendition of the judgment aforesaid, the said defendant, by his counsel aforesaid, filed in court here the following bill of exceptions, to wit:

Bill of exceptions to judgment.

STOCKTON & STOKES
vs.
AMOS KENDALL.

After (at the last term of this court, at the trial of this cause) the plaintiffs had produced to the jury evidence under all the counts of their declaration, the court had instructed the jury on the competency of the evidence, and on the plaintiffs' right of action under each and every of the said counts, as appears by the said bills of exceptions, the jury had returned a general verdict on the whole declaration, which had been recorded as aforesaid—which verdict was returned on the last day of the term; and immediately on the rendition thereof, the court adjourned till the ensuing term—the defendant had filed his motion in arrest of judgment as aforesaid, before such adjournment, and the said motion had been continued to this term, as aforesaid.

The plaintiffs now here, at this term, moved *moved* the court to enter the verdict upon the 1st and 5th counts of the declaration; and that they be permitted to enter a nolle prosequi on all the counts of their said declaration, except the said first and fifth counts, and that judgment be rendered on those two counts alone. To which motion the said defendants objected.

And the court now here, after argument of the defendant's said motion in arrest of judgment, having overruled the same, proceeded

to enter judgment for the plaintiffs on the said two last mentioned counts, and judgment for the defendant upon the nolle prosequi as to the residue of the said counts as aforesaid, having allowed the plaintiffs' motion to enter the said verdict on the said two counts alone. To all which procedure the defendant, by his counsel, excepts.

Motion to arrest judgment on 1st and 5th counts.

And now here again prays and moves, that the judgment so entered on the said two counts be arrested for error in the procedure aforesaid, and that judgment be rendered for the defendant; which last mentioned prayer and motion was overruled by the court. And this the defendant's bill of exceptions to the procedure and decision aforesaid is now here sealed, this 12th day of April, 1842.

W. CRANCH, [SEAL.]
JAMES S. MORSELL. [SEAL.]

After the rendition of the verdict aforesaid, the defendant produced the following certificate by the said jurors, and prayed the court to be permitted to have the same entered on the minutes of the court, to which the court assented:

We, the jurors, empannelled in the case of William B. Stokes and others vs. Amos Kendall, and in which case we have this day rendered our verdict for the plaintiffs for $11,000, do hereby certify that said verdict was not founded on any idea that the defendant performed the acts complained of by the plaintiffs, and for which we gave damages, as above stated, with any intent other than a desire faithfully to perform the duties of his office of Postmaster General, and protect the public interests committed to his charge; but the said damages were given by us on the ground that the acts complained of were illegal, and that the said sum of $11,000 was the amount of actual damage to plaintiffs estimated by us to have resulted from said illegal acts.

Joseph S. Clark, foreman.	Walter Clarke,
James Lusby,	John E. Neale,
Thomas Magill,	Simeon Matlock,
Edmund Brooke,	Alexander Boreland,
James Clephane,	Peter F. Bacon,
L. Beeler,	John P. Ingle.

WASHINGTON, *March* 18, 1842.

Defendant's first bill of exceptions.

WILLIAM B. STOKES, et al.
vs.
AMOS KENDALL.

Memorandum on the trial of the issues above joined.

The plaintiffs, to support the said issues on their part, produced and offered the following evidence, written and oral; to the admis-

sibility and competency of all which, collectively and separately, as offered, the *the* defendant excepted; and by consent, the said evidence was produced and given in, subject to all exceptions, on the part of defendant, to the admissibility and competency of the same, after the same shall have been fully exhibited and seen by the court, with the like effect and advantage to defendant as if preliminary exceptions had been taken and discussed to the evidence collectively, or piece by piece, as successively produced and offered.

As to so much of said evidence as consists of documents and writings, it is admitted to be all duly authenticated, to the intent and purpose of being taken, considered as being what it purports on its face to be, to wit:

The entire transcript of the record in the matter of mandamus between the United States on the relation of William B. Stokes et al., and Amos Kendall, Postmaster General of the United States. (Copied in page 59.)

The report of Virgil Maxcy, Solicitor of the Treasury, transmitted by him to Congress on the 26th December, 1836, and printed by order of the House of Representatives on the 14th October, 1837; being the entire public document designated as document No. 52, 20th Congress, 1st session, Ho. of Reps. (Copied in page 95.)

The letters, statements, and documents in manuscript hereto annexed, and numbered from No. 1 to 25. (Copied in page 419.)

And the plaintiffs then produced O. B. Brown, a competent witness, *and* who testified, that when, in the fall of 1831, the mail routes between Baltimore and Wheeling were accepted to R. C. Stockton, Mr. Stockton reported to the Postmaster General that his partners in the contract were William B. Stokes, L. W. Stockton, and Daniel Moore, and the Postmaster General agreed to recognise them as such. Mr. Stockton then asked the Postmaster General whether it was necessary that they should all sign the written contract, in order to be recognised by the department as partners in the same. The Postmaster General told him it was not necessary. They did not all sign the contract, but were all known and recognised by [the] department as partners. It was stated to the department that R. C. Stockton would have the chief superintendence of the eastern part of the line, and L. W. Stockton of the western part of the line.

And the witness, on his cross-examination, further testified, that what he has above said as having been stated to the department relative to the superintendence of the eastern and western parts of said line, was so stated to the former Postmaster General, William T. Barry, by said Richard C. Stockton, shortly before he signed the contract, and also by L. W. Stockton at different times; and that the said contract was in writing, was entered into in the fall of 1831, to commence operation on the 1st of January, 1832, and continue four years; that it was signed by said Postmaster General, or by some one on his behalf, and by Richard C. Stockton alone—

or by Stockton and Stokes, the witness is uncertain which—as he supposed for himself and those whom he represented.

The court at first sustained the objection to the competency of the evidence of O. B. Brown, on the ground that the contract spoken of appeared to be in writing and was not produced, or the non-production thereof accounted for; but afterwards, when the original of the said contract was produced and duly proved among the original mail contracts hereinafter mentioned, the said evidence was admitted by the court. To which the defendant still excepts.

And the plaintiffs then produced Robt. H. Cummings, a competent witness, *and* who testified, that the national road stage company consisted of R. C. Stockton, Wm. B. Stokes, L. W. Stockton, and Daniel Moore, from 1831 to 1835 inclusive; that the business of the company was the carrying of mails and stage passengers from Washington, via Baltimore, to Wheeling; and that R. C. Stockton died in November, 1837; that Stockton and Stokes were interested, with others, on so much of the said route as extended from Hagerstown to Wheeling, and exclusively of the others between Washington and Hagerstown.

And plaintiffs then produced James Williams, a competent witness, &c., who testified, that sometime in *in* the latter part of the fall of 1837, he was informed, by a clerk in the Post Office Department, that the contract for carrying the mail from Washington to Baltimore was to be taken from Stockton and Stokes; that he mentioned what he had so heard to defendant, who said Stockton and Stokes had treated him ill; that he would give the contract to witness; that it must be done in a week, and in the meantime kept secret, because, if Stockton and Stokes knew it, they would throw up the contract and bring Congress on his head. Witness enquired if he was to take the stock (horses and carriages) of Stockton and Stokes; to which defendant answered, he did not wish it.

And the plaintiffs then produced and duly proved the originals of the mail contracts, with the collateral bonds and securities referred to in the declaration, and copies whereof, with certain marginal notes, and of the collateral bonds, are set out in the said printed document containing the solicitor's report, &c., as produced by the plaintiffs and admitted by the court as aforesaid, and are therein designated as No. 1—A, No. 1—B, and No. 36; the originals of the said contracts and bonds being under the hands and seals of the parties respectively, and the original contracts having inscribed on them the same marginal notes as in the said copies; which, as produced by plaintiffs in said printed documents, are admitted to be correct copies, with the exception of omitting to make the seals actually affixed to all the signatures in the originals.

1st. To the admissibility and competency of all which evidence, comprising the said transcript of the record in the mandamus case, the said report of the Solicitor of the Treasury so transmitted to Congress as aforesaid, and the other documentary evidence, with

the oral evidence aforesaid, to support the plaintiffs' action under the 1st, 2d, 3d, 4th, and 5th counts of their declaration, severally and successively, and of each and every part of such evidence, severally and successively, the defendant objected; and upon each part and parcel of the same, respectively, prayed that the same be rejected and deemed inadmissible and incompetent, as aforesaid, under such count.

Which objection was overruled by the court, as to each and every of said counts, and the whole of the said evidence was admitted as competent to prove, under each count respectively, such facts as the evidence aforesaid in its terms tended to prove.

One of the judges, however, being of opinion that the said evidence was so far incompetent as being secondary evidence, to prove such contract between R. C. Stockton and the Postmaster General, Wm. T. Barry, as the plaintiffs had averred in their declaration, it appearing to the satisfaction of the court that such contract was under the hands and seals of the parties, and was not produced or offered in evidence by the plaintiffs, and no sufficient cause shewn why the same, or a copy thereof, was not produced, and the court being equally divided on this last point, (only two judges being on the bench,) the said evidence was admitted as aforesaid, and given to the jury.

To which admission of this said evidence the defendant excepts; and this his bill of exception is signed, sealed, and ordered to be enrolled, this 7th of January, 1842.

W. CRANCH, *(aut.)* [SEAL.]
JAMES S. MORSELL. [SEAL.]

Memorandum.—The contracts under the hands and seals of the parties having been thereupon produced and given in evidence by the plaintiffs, as in the foregoing statement of evidence appears, the court concurred in the admission of the said evidence, without any difference as to the point on which the judges had at first differed in opinion as aforesaid.

And the plaintiffs having here for the present concluded their evidence, and resting their case upon the evidence so offered and admitted by the court as aforesaid, the defendant thereupon prayed this opinion and instruction from the court to the jury, to wit:

That the acts of defendant, as Postmaster General, in suspending the allowances mentioned in the two letters from P. S. Loughborough, as treasurer, both dated 14th May, 1835, the one addressed to Messrs. Stockton & Stokes, the other to L. W. Stockton, and above given in evidence by plaintiffs, and in continually holding the same under suspension, and refusing to credit or pay the same till the rendition of the solicitor's award above given in evidence by plaintiffs, were not such as laid him liable to the plaintiffs *in the right in which they now sue*, to the aforesaid action; and that upon the evidence so as aforesaid produced and given on the part of

plaintiffs, they are not entitled to maintain this action on their said 1st, 2d, and 3d counts of their amended declaration.

Which instruction the court refused; and to such refusal the defendant excepts.

And this his bill of exceptions is signed, sealed, and 7th January, 1842.

W. CRANCH, [SEAL.]
JAS. S. MORSELL. [SEAL.]

Whereupon the defendant prayed this other opinion and instruction from the court to the jury, to wit:

No. 3. That *defendant* is not liable in this action, under the 4th and 5th counts of the plaintiffs' amended declaration, for his omission or refusal to comply with so much of the said awards of the solicitor as he, on the ground of want of jurisdiction in the said solicitor, refused to comply with, after crediting and paying the residue of the said awards, in part compliance with the same, as shewn in said evidence.

Which instruction the court also refused; and to such refusal the defendant excepts, this 7th January, 1842.

WM. CRANCH, [SEAL.]
B. THRUSTON. [SEAL.]

Whereupon the defendant prayed this other opinion and instruction from the court to the jury, to wit:

No. 4. And the defendant, upon each and every of the plaintiffs' said counts, severally and successively, prayed the opinion of the court, and their instruction to the jury, that the evidence so as aforesaid produced and given on the part of the plaintiffs, so far as the same is competent to sustain such count, is not competent and sufficient to be left to the jury as evidence of any act or acts done or omitted, or refused to be done by defendant, which legally laid him liable to the plaintiffs in this action, under such count, for the consequential damages claimed by plaintiffs in such count.

Which instruction the court refused to give on any of the said counts. To which refusal the defendant excepts; and this, his exception, is signed, sealed, and ordered to be enrolled, this 7th of January, 1842.

W. CRANCH, [L. S.]
B. THRUSTON, [L. S.]
JAMES S. MORSELL. [L. S.]

Whereupon the defendant prayed this other opinion and instruction from the court to the jury, to wit:

No. 5. And the defendant also, upon each and every of said counts, severally and successively, prayed the opinion of the court and their instruction to the jury, that the plaintiffs have not shown, in the evidence offered and produced by them as aforesaid, such joint

right of contract and of action as is necessary to support their said action in the joint right of themselves and the said R. C. Stockton under such count.

Which instruction the court refused to give on any of said counts. To which refusal the defendant excepts; and this, his bill of exceptions, is signed, sealed, and ordered to be enrolled, this 7th of January, 1842.

W. CRANCH, [L. S.]
B. THRUSTON, [L. S.]
JAMES S. MORSELL. [L. S.]

And the defendant prays the court to sign, &c., &c., this his bill of exceptions to all and singular the said opinions and decisions of the court in admitting the said evidence and refusing the said instructions; and it is done accordingly, this tenth day of January, 1842.

W. CRANCH, [L. S.]
JAMES S. MORSELL. [L. S.]

Defendant's 2d bill of exceptions.

Defendant's 2d bill of exceptions.

STOKES et al.
vs.
KENDALL.

Memorandum.—After all the evidence stated in the foregoing bill of exceptions had been admitted by the court and given to the jury, as aforesaid, the defendant produced and gave in evidence to the jury—

The depositions of Andrew Jackson, Martin Van Buren, and B. F. Butler, and certain passages of the same admitted by the court as competent, omitting certain other passages thereof, excluded on the plaintiffs' objection as incompetent, as marked on said depositions respectively. (Copied in pages 487, 505, and 527.)

Two official letters, dated 30th June and 6th July, 1835, from defendant as Postmaster General, and to B. F. Butler, Attorney General, &c.; and the said Attorney General's official answer and opinion, dated October, 1835. (Copied in page —.)

Which last it is agreed may be read from the printed collection of the opinions of the Attorney General of the United States, reported to Congress, and printed by order of the House of Representatives, in document No. 123, 26th Congress, 2d session, Ho. of Reps., executive, page 1010, &c.; correspondence of the Post Office Department with Messrs. Stockton & Stokes, &c.—(d 1.) (Copied in page 623.)

Letter from the Solicitor of the Treasury to defendant, dated December 21, 1836; being the same referred to in the note at the end of said solicitor's report—(e 1.) (Copied in page 631.)

The reports of the majority and minority of the committee of the House of Representatives to whom the examination into the condition and proceedings of the Post Office Department was referred, being designated as No. 103, 23d Congress, 2d session, Ho. of Reps., and the report of the committee of the Senate to whom the enquiry into the condition and proceedings of the Post Office Department was referred at the same session of Congress, read with the Senate bill (No. 123) reported by said committee on the 28th January, 1835. All which reports, being public documents printed by order of the House of Representatives and Senate respectively, it is agreed may be offered to, and taken as part of, this bill of exceptions, without being transmitted in the record.

The evidence of Francis S. Key and other competent witnesses duly sworn in the case, going to prove that Mr. Key had acted as counsel and advocate of the plaintiffs in supporting and advocating their said claims by statements and arguments before the defendant as Postmaster General, before the said Attorney General, whilst the case was under his consideration as aforesaid, and before the said Solicitor of the Treasury, whilst the said claims were under his consideration as aforesaid; that he had duly laid before the said Attorney General, whilst the case was under the consideration of that officer as aforesaid, all the representations, statements, and agreements offered by plaintiffs and their counsel in support of their said claims; that he acted, throughout, in the premises, without any malice or ill will towards plaintiffs, and without any intention or disposition to oppress or injure them, and had *done* all that in him lay to relieve them from pressure and distress whilst their claims to the extra allowances in question remained in suspense. And defendant further proved that, upon his appointment to the office of Postmaster General in May, 1835, he had resolved to discontinue the practice, before prevailing in the department, of accommodating contractors with conditional acceptances of their drafts, in anticipation of payments afterwards to accrue under their contracts, for the purposes of enabling them to obtain bank discounts on such acceptances, and to be taken up out of such pay as it accrued; that, at the time such suspensions of allowances under the contracts now in question were ordered by the defendant as aforesaid, there were such prior acceptances of the drafts of Stockton & Stokes in anticipation of payments under said contracts standing, on discounts in different banks, to the amount of $74,624 25; that defendant excepted those drafts from the rule he had laid down against acceptances of such in future, and continued to renew the acceptances of new drafts in place of them from time to time as they fell due, for the purpose of enabling Stockton & Stokes to renew and continue the bank discounts on the same; that, besides such amount of conditional acceptances, over payments in cash had been made under said contracts and charged, in the *amount* of R. C. Stockton, to such an amount as would have left a balance of $8,000 and up-

wards against him, if the sums so suspended by defendant had been left to his credit; that the amount of the said acceptances, and of the said pecuniary balance, was liquidated and retained by the Post Office Department out of the first payments made in pursuance of the said awards of the solicitor.

That the line of opposition to be taken up on the part of defendant, as Postmaster General, to the said mandamus issued from this court as aforesaid, was matter of deliberation with the then President and his cabinet, and was by them required to be confined to objections against the jurisdiction of the court to take cognizance of the matter of such mandamus, without drawing in issue before the court the merits of the objections that had been raised by defendant to so much of the solicitor's award as he had refused to execute; which determination of the President and his cabinet was communicated by the said Attorney General to the district attorney, Mr. Key, and the defendant's answer to said mandamus was prepared accordingly.

Whereupon the defendant, upon the whole of the evidence aforesaid, as well the evidence on the part of the plaintiffs set out in the foregoing bill of exceptions, as the aforesaid evidence on the part of the defendant, and upon each of the counts in the plaintiffs' declaration, separately and successively, applying all the said evidence to each count distributively, prayed the court to deliver to the jury, first, the annexed opinion and instruction No. 1 *a*; secondly, that being denied by the court, the annexed opinion and instruction No. 2 *a*; thirdly, that being also denied by the court, the annexed opinion and instruction No. 3 *a*; and fourthly, (the last being also denied by the court,) the annexed [opinion] and instruction No. 4 *a*; each and every of which instructions the court utterly denied and refused to deliver to the jury.

Instruction No. 1 a.

If the jury find, from said evidence, that, of all the parties named in the declaration as joint contractors and parties with the said R. C. Stockton, deceased, he, the said R. C. Stockton, alone, was a party to and executed the mail contracts in the declaration mentioned and referred to, and under which the several sums of money and allowances in the declaration mentioned, and therein claimed to have been earned by plaintiffs and said R. C. Stockton for services performed in execution of such contracts, and the several sums of money and allowances claimed in the said declaration to have been determined and adjudged by the said Solicitor of the Treasury to the plaintiffs and said R. C. Stockton, accrued; that of all the said parties, he, the said R. C. Stockton, was the only one recognised and received at the Post Office Department, or by the Postmaster General, as best bidder under the public proposals issued from the said department, in pursuance of which the said contracts

were formed and executed, and the only one who had any communication with the said department, or with the said Postmaster General, in relation to said contracts or any of them, till after the same had been definitively formed and executed, and after practical operations in execution of the same had commenced; that the only concern or interest of the now plaintiffs in said contracts, or in the services performed, or in the pay or allowances accruing under said contracts, arose from sub-contracts between them and said R. C. Stockton, by which sub-contracts there was established or community of *of* interest between them in the said contracts, nor in any of the entire mail routes therein described; that by such sub-contracts certain of the said mail routes, including those for transportation on which all the said pay and allowances were claimed and adjudged as aforesaid, were each subdivided and parcelled out in several distinct portions among the said parties, some of them having the superintendence and execution of the transportation on one part of each route, and others of them on other parts of the same route, and respectively drawing certain portions of the pay and allowances allotted by the original contracts with the Post Office Department to the stipulated transportation on the mail routes so subdivided and parcelled out; then the plaintiffs, as survivors of the said R. C. Stockton, had not, in virtue of such sub-contracts, such joint rights of contract and of action in the premises as were necessary to support this action.

Instruction No. 2 a.

If the jury find, from the said evidence, that the defendant, as Postmaster General, acted in the premises from a conviction that he had the lawful power and authority, as such Postmaster General, to set aside the said extra allowances, as claimed under the allowance of his predecessor, and to suspend and recharge the same, and from a conviction that it was his official duty to do so; and if plaintiffs suffered no oppression, injury, or damage, from such official act of the defendant, but the inconveniences necessarily resulting from such official act, then he is not liable to plaintiffs in this action for having so set aside, suspended, and recharged such extra allowances.

Instruction No. 3 a.

If the jury, in addition to the facts above supposed in the last preceding form of instruction, further find, from said evidence, that the defendant, in refusing to credit plaintiffs with such parts of the solicitor's awards as he refused to credit them with as aforesaid, acted from a conviction that the solicitor had no lawful jurisdiction or authority to audit, settle, or adjust the claims or items of claim upon which he awarded the several sums of money, constituting the sum of what defendant refused to credit them with as aforesaid, and from a conviction that it was therefore his official duty to refuse

to credit them with so much of the amount awarded by the solicitor as aforesaid; and if plaintiffs suffered no oppression, injury, or damage, from such refusal of the defendant, but the inconveniences necessarily resulting thereupon, then he is not liable to plaintiffs in this action for such refusal.

Instruction No. 4.

That the defendant is not liable in this action for any of his said acts in the premises, if, in addition to the facts supposed in the two last preceding forms of instruction, the jury believe, from the whole evidence, that he acted in the premises with the bona fide intention to perform duly the duties of his office, and without malice or intention to injure and oppress the plaintiffs.

To which said several refusals of the several instructions, so as aforesaid prayed by the defendant's counsel, No. 1 *a*, No. 2 *a*, No. 3 *a*, and No. 4 *a*, the defendant excepts, and this his bill of exceptions is signed, sealed, and ordered to be enrolled, this 10th of January, 1842.

W. CRANCH, [L. S.]
JAS. S. MORSELL. [L. S.]

Defendant's 3d bill of exceptions.

WM. B. STOKES et al.
vs.
A. KENDALL.

The plaintiffs, further to support the issues on their part, above joined, produced and offered evidence to prove their special expenses, losses, &c., in consequence of the defendant's acts in the premises, to wit, such expenses and losses as are set out in the papers annexed, marked A, B, C, D, (copied in page 633, 5, 7, 8;) and also their expenses and losses in the form of bank discounts, paid by Stockton & Stokes, on post office acceptances, and interest paid by them on money borrowed from May 30th, 1835, to Nov. 9th, 1836, amounting to $9,749 14, a particular account whereof, (being the same as the document No. 52, annexed to the solicitor's report, above given in evidence by plaintiffs,) they produced, as taken from the books of Stockton & Stokes, and proved that all the original entries in the said account were in the handwriting of one A. Malter, all that time the clerk who kept the said books, and has since deceased; and further evidence to prove that Stockton & Stokes were in good credit up to May, 1835, when said suspensions were made by order of defendant, and that their credit was afterwards destroyed in consequence of such suspensions.

To the admission of which evidence defendant objected, but the court overruled the objections, and admitted all the said evidence to go to the jury. To which defendant excepts, and this his bill of exceptions is sealed, &c., &c., this 10th day of January, 1841.

W. CRANCH, [L. S.]
JAS. S. MORSELL. [L. S.]

Exhibits referred to in defendant's 1st bill of exception, page 40.

Transcript record in Mandamus case.

Transcript of the record in the matter of Mandamus, between the United States on the relation of William B. Stokes et al. and Amos Kendall, referred to in defendant's first bill of exceptions, page .

DISTRICT OF COLUMBIA, *sct:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, being the twenty-seventh day of the same month, in the year of our Lord one thousand eight hundred and thirty-seven, and of the independence of the United States the 61st.

Present, the honorable William Cranch, chief judge; Buckner Thruston, James S. Morsell, assistant judges; Alexander Hunter, esq., marshal.

WILLIAM BRENT, *Clerk.*

Parties.

In the records of the proceedings of the said court, among others are the following, to wit:

THE UNITED STATES, on the relation of W. B. STOKES, R. C. STOCKTON, LUCIUS W. STOCKTON, and DANIEL MOORE,
against
AMOS KENDALL, Postmaster General of the United States.

Be it remembered, that the said relators, by Richard S. Coxe, esq., their attorney, filed in court here, on the twenty-sixth day of May, in the year of our Lord one thousand eight hundred and thirty-seven, the following petition and exhibits, to wit:

Petition.

To the honorable the judges of the circuit court of the District of Columbia, for the county of Washington:

The petition of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, respectfully showeth:

That your memorialists, under contracts made with them and the Postmaster General of the United States, the late William T. Barry, were entitled to certain credits and allowances on their several contracts for the transportation of the mail of the United States; that the said William T. Barry was, as such Postmaster General, by the

laws of the United States, duly authorized to make such contracts and arrangements with your petitioners as such contractors, and that said contracts were duly and legally made; that certain credit and allowances were duly made and given to your petitioners upon the said contracts, and certain amounts of money actually paid on such accounts; that, sometime in the year 1835, the said William T. Barry resigned his said situation of Postmaster General, and Amos Kendall was appointed to the said office, who entered upon and undertook to perform the duties of said office; that some time after the said Amos Kendall had thus entered upon the said office, he undertook to examine the said contracts thus entered into by his predecessor, the allowances by him made, the credits given, and the payments under the same, and did order and direct that the said allowances and credits should be withdrawn, and your petitioners recharged with divers payments which they had received.

And your petitioners further show unto your honors, that they were dissatisfied with said *said* proceedings of the said Amos Kendall, as Postmaster General as aforesaid; and believing that he was exceeding his official authority in said proceedings, as also that he was mistaken as to the legal rights of your petitioners, as well as to the extent of his own powers and authority, and being unable to make a satisfactory adjustment of said matters of difference with him, your petitioners did address a memorial to the Congress of the United States, as by reference to the same on file in the Senate of the United States, and a copy thereof hereunto annexed and marked A, will appear. (Copied in page 13.)

And your petitioners further show unto your honors, that the said Congress of the United States did so proceed upon the said memorial, and the evidence adduced to support the same; that they passed an act, which was approved by the President of the United States on the second day of July, 1836; that, in and by said act, it was, among other things, provided, that the Solicitor of the Treasury was authorized and directed to settle and adjust the claims of your petitioners for extra services performed by them, as contractors for carrying the mail, under and by virtue of certain contracts therefor, by them alleged to have been made and entered into with them by William T. Barry, late Postmaster General of the United States, and for this purpose to inquire into and determine the equity of the claims of them, or any of them, for, or on account of, any contract, or additional contract, with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make them such allowances therefor, as, upon a full examination of all the evidence, may seem right, according to the principles of equity; and that the Postmaster General be, and he is hereby, directed to credit such mail contractors with whatever sum, or sums of money, if any, the said solicitor shall so decide to be due to them for, and on account of, any such service or contract; and the solicitor is hereby authorized to take testimony, if he shall

judge it to be necessary to do so; and that he report to Congress, at its next session, the law and the facts upon which his decision has been founded, as in and by the said act of Congress, reference being thereunto had, will more at large appear, mark B. (Copied in page 19.)

And your petitioners further shew unto your honors, that, after the passage of the said act of Congress, Virgil Maxcy, being the Solicitor of the Treasury, assumed upon himself the performance of the duty and authority created and conferred upon him by the same; and did, in pursuance and execution of the said act, proceed to examine, settle, and adjust the claims of the said parties, as he was therein and thereby authorized and directed; that, on the 12th of November, 1836, he did make out and transmit to the said Amos Kendall, Postmaster General, in part, his award and decision upon certain items of said claims so referred to him; and, on the 23d November, 1836, did make, and communicate to the said Postmaster General, his decision and award upon the residue of said claims of your petitioners, as will more fully and at large appear, by reference to the said documents in the possession of said Postmaster General, or to copies thereof hereunto annexed and made part of this petition, marked C and D. (Copied in pages 21 and 25.)

And your petitioners further show, that, in further execution of said act of Congress, said Virgil Maxcy, Solicitor of the Treasury as aforesaid, did, on or about the 26th day of December, 1836, make out, and report to the Congress of the United States, the law and the facts upon which his decision had been founded, as by reference to the original on file in the Senate, or a copy thereof hereunto annexed and marked E, will appear. (Copied in page 33.)

And your petitioners shew unto your honors, and insist that, under and by virtue of said award and decision of the said solicitor, so communicated and reported as aforesaid, and of the said act of Congress, your petitioners became, and were, entitled to have the sum of $162,727 05 carried to their credit, or, at least, after allowing for some deductions therefrom, made by said solicitor by and with the assent of your petitioners, or some of them, the sum of $161,563 89, as the amount of principal and interest due to your petitioners by the terms of said award and decision. But the said Postmaster General, although fully notified of the premises, and after a considerable delay, only so far obeyed and carried into execution the said act of Congress and said award, as to direct, and cause to be carried to the credit of your petitioners, the sum of $122,101 46, which said last mentioned sum of money has been accordingly paid or credited to your petitioners; and he has from that time, and does still refuse, omit, and neglect, notwithstanding the provisions of said act of Congress, and the said award and decision of the said Solicitor of the Treasury, so made, communicated, and reported, as aforesaid, to pay, or credit to your petitioners, the

residue of the said sum so awarded, being the sum of $39,462 43, or to credit or pay to your petitioners, or either of them, the interest upon the said balance so unjustly and illegally withheld.

And your petitioners further shew unto your honors, that, after the said Amos Kendall had, as aforesaid, refused, omitted, and neglected to execute his duty, by obeying the said act of Congress in passing the amount so awarded as aforesaid to their credit, your petitioners, or some of them, acting in behalf of all, addressed a communication to the President of the United States, requesting him to cause said act of Congress to be executed; and the said President did transmit to the said Amos Kendall, Postmaster General as aforesaid, the said letter, and receiving from him a reply, setting forth the grounds upon which he had thus refused, neglected, and omitted, and suggesting the propriety of an application to Congress for further legislation upon the subject, the same was transmitted by the said President as an answer to said letter written in behalf of your petitioners, as by reference to the same herewith exhibited, and marked F, will appear. (Copied in page 69.)

And your petitioners further show, that, in consequence of said correspondence, they caused to be presented to Congress a memorial, the original of which is on file in the said Senate, as aforesaid, and a copy of which is hereunto annexed, and marked G, (copied in page 72,) which said memorial was laid before the Senate, and by that body referred to its Committee on the Judiciary; and the said committee did examine into the said memorial and the subject matter thereof, and also sundry papers connected therewith, particularly certain papers from the said Postmaster General, and from the Solicitor of the Treasury, setting forth their views and the reasons by which they were respectively governed, as by reference to the same, and the papers therein respectively referred to, on file with the said Senate, or to copies thereof hereunto annexed, and marked H, I, K, (copied in pages 74, 127, 235,) will appear. And the said Committee on the Judiciary did make report to the Senate, as will appear by reference to copies of their reports hereto annexed, and marked L, M, (copied in pages 259 and 266,) and to correspondence between said Postmaster General and the chairman of said Committee hereunto annexed, and marked M, *a*. (Copied in page 267.)

And your petitioners further shew and represent, that the principal if not the only ground upon which the said Amos Kendall, the said Postmaster General as aforesaid, did refuse, neglect, and omit fully to execute and obey said act of Congress, and to carry the same into effect by carrying to the credit of, or causing to be credited to, your petitioners the full amount of said award and decision, so made by the solicitor of the Treasury, was, as represented by him, that the said solicitor had transcended the authority created and conferred on him by the said act of Congress, in so awarding and deciding; whereas, as your petitioners are advised and be-

lieve, the said solicitor did in no manner exceed or transcend his duty or authority; but, on the contrary, being apprised that a doubt might exist as to the true construction of said act of Congress, and as to the extent of his duty and authority under it, he did, before making his said award and decision, submit the said question to the Attorney General of the United States, and obtain his opinion thereupon, as by reference to the papers hereunto annexed, and marked N and O, will appear, or copies thereof in exhibit J. (Copied in page ——.)

And your petitioners conceiving and believing that they are and have been fully entitled to have the whole sum, so awarded by the said solicitor, passed to their credit on the books of the Post Office Department, and to receive the amount which, after the said entry, should appear justly due to them, with legal interest upon the balance, have applied to the said Amos Kendall, Postmaster General as aforesaid, to have the said credits so entered, and the said moneys so paid, which he has continually refused, and still refuses and neglects to do; and the Congress of the United States will not pass any other or further law, as it is believed, merely because they have already passed one sufficient to meet the case, so that the only means of obtaining the money, which is justly due to your petitioners, is by application to your honorable court.

Wherefore your petitioners do respectively pray that your honors, the premises considered, will award the United States writ of *mandamus* to be directed to the said Amos Kendall, Postmaster General of the United States, commanding him—

1. That he shall fully comply with, obey, and execute, the aforesaid act of Congress of July 2, 1836, by crediting your petitioners with the full and entire sum so awarded, as aforesaid, in their favor by the solicitor of the Treasury as aforesaid, in conformity with said award and decision.

2. That he shall pay to your petitioners the full amount so awarded, with interest thereon, deducting only the amount which shall be justly charged or chargeable to your memorialists against the same.

MARYLAND, *Baltimore city, ss:*

Lucius W. Stockton, one of the aforesaid petitioners, being duly sworn according to law, deposes and says: that he is one of the parties petitioner in the aforesaid petition named, and that the said petition does faithfully and truly detail the facts as therein stated, and that all the matters stated in said petition are true, to the best of his knowledge and belief.

L. W. STOCKTON.

Sworn and subscribed this 20th day of May, 1837, before me,

R. B. TANEY,

Chief Justice Supreme Court United States.

Exhibit A.

Exhibit A, referred to in plaintiffs' petition, p. 6.

To the honorable the Senate and House of Representatives of the United States:

The memorial of William B. Stokes, Richard C. Stockton, of Maryland, and Lucius W. Stockton and Daniel Moore, of Pennsylvania, respectfully sheweth:

That they became contractors with the Post Office Department in 1831, and, among other services, engaged to carry the United States mail from Baltimore and Washington to Wheeling, on the terms and in the manner stated in their contract. By their engagement, a considerable increase of speed was stipulated for, if desired by the department, and was required and performed, and further compensation allowed for it. The contract, thus improved, went into operation on the 1st of January, 1832.

The ordinary mails between those cities at the time of making these engagements, and for some time before, did not exceed the weight of one hundred pounds; but the increased speed thus required and given on this route, drew upon it the mails (or a very large proportion of them) that had before gone more directly, but less expeditiously, from Philadelphia and New York, as the letters and papers from those cities reached their destinations in the west a day earlier by the way of Baltimore. This circumstance, and probably some change in the Post Office laws, together with an intimation from the department to the Post Office in Philadelphia or New York, soon produced an increase in the weight of the mails on this route, stated by an officer of the department to appear from certificates on file, to be "more than a tenfold ration."

Your memorialists, finding themselves thus unexpectedly encumbered with a weight of mails, which their preparations to fulfil their contract were entirely inadequate to bear, nevertheless went on to increase their force upon the route, and provided for the additional labor thus thrown upon them, supposing these services, thus rendered necessary by arrangements and events contemplated at the time of the contract, could not be considered obligatory under the contract, they applied early in the year 1833 to the department to be compensated for them. In that application, twenty-five per cent. was asked to be added to their mail pay as then established, as the additional compensation for this extra service. Their correspondence with the department (herewith submitted) will show, that the agents of the government had as little contemplated as your memorialists the circumstances under which this extraordinary weight of mails had been thrown upon them, and consequently entertained the same opinion expressed by your memorialists, of their right to be compensated for the services they were thus

performing. The services were required of them on a clear promise of compensation, the amount to be afterwards ascertained.

Your memorialists further beg leave to state, that the offer thus made in their behalf to perform this duty, per 25 per cent. advance on their regular pay, was made by one of your memorialists without conferring with his associates, who were better informed than himself of the extent of labor and expense occasioned by the increase of the mails; and that soon afterwards, and upon more accurate statements and calculations, it was foundthat the increaseof the mails averaged a much greater amount than he had supposed, being at least twenty times as great as at the commencement of the contract, and required a much greater expense for its transportation than he had estimated.

These views were afterwards fairly submitted to the head of the department, and fully considered; and the accompanying documents and papers will show that an allowance of fifty per cent. on their pay, as regulated by the contract, was ordered as a compensation for their extra duty.

These documents will show, as your memorialists conceive, that this allowance (though the order of the Postmaster General had been for some time mislaid) was, in February last, entered on the books of the department to their credit, and that long before it was so entered, and from the date of the order, the amount of this allowance was included in the estimates of their quarterly pay, and paid to them; and they refer to the statements of the late Postmaster General and of the Treasurer, Mr. O. B. Brown, accompanying this memorial, to show these facts.

These payments may not appear on the books of the department (and your memorialists presume they do not) to have been made on estimates including the extra compensation thus ordered; but your memorialists were entitled in no other way to the sums they thus received, and had not asked for or been allowed such advances, and had no reason to believe that an allowance thus ordered, and thus entered to their credit, and thus paid to them, would be ever questioned.

They respectfully submit, that they had no reason to suppose that the Postmaster General had not the power he assumed, and which they were aware he and all his predecessors had exercised in deciding what services were included in a contract made with the department, and what were to be considered as extra or additional. They were also confident that the compensation they asked for was just and reasonable, and they submit documents and proofs herewith, to show it was so; and they presume it will abundantly appear, that the allowance thus ordered by the head of the department, with a full view and fair consideration of all the circumstances attending the claim, and that your memorialists are properly entitled to all the benefit of it.

Your memorialists further state, that their account being unset-

tled in the books of the department, when the present Postmaster General came into office, he considered himself bound, in the adjustment of their accounts, to reject any credits for the allowances thus made to them for this extra duty. In this construction of the Post Office laws, he also felt himself without legal authority to adjust the claims and make any compensation for these services; and further considering that there had been no legal sanction for the allowances thus made to your memorialists, he felt bound by his duty to stop the regular contract pay of your memorialists, till the sums they had thus received from the department (and which he considered as over-payments) were refunded to the government.

Those views, thus entertained by the Postmaster General, of the Post Office laws, and of the powers and duties of that department, were, at the request of your memorialists, submitted to the decision of the Attorney General of the United States. They refer to this opinion, accompanying this memorial, by which it appears that he concurs, in his view of these legal questions, with the Postmaster General; so that no other remedy is left to your memorialists in a case, as they conceive, of very peculiar hardship, except that which is intimated in a passage of the Attorney General's opinion, and expressed in reference to this and similar claims, in the conclusion of the Postmaster General's report to your honorable body.

Your memorialists find themselves in the same situation of hardship and difficulty in relation to another contract, (in which, however, only two of them are concerned,) under which they had rendered services in transporting the mail from Washington to Philadelphia. These services were brought before the view of the department, and the opinion of counsel was laid before the late Postmaster General, who, after full consideration, ordered the allowances claimed by your memorialists, which allowances were entered into the books of the department to their credit and paid to them.

They refer to the papers and documents accompanying this memorial, which fully state and explain the nature of this claim. Their regular pay is also stopped by order of [the] department, on the same grounds of the want of legal authority in the head of the department to make the allowances.

Your memorialists, notwithstanding the great embarrassments attending the stoppage of the funds they relied on to enable them to conduct their very expensive operations, under heavy contracts with the department, have, with great difficulty, and at great sacrifices, continued to fulfil their engagements, as they have always done, with fidelity.

And they respectfully request such proceedings in their behalf on the part of Congress as its wisdom and justice may direct.

(Signed) STOCKTON & STOKES,
For themselves and the Petitioners.

Exhibit B, referred to in plaintiffs' petition, p. 7.

Exhibit B.

CHAP. 284. An act for the relief of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore.

Act of Congress for relief of petitioners, &c.

Sec. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Solicitor of the Treasury be, and is hereby, authorized and directed to settle and adjust the claims of William B. Stokes, Richard C. Stockton, of Maryland, and Lucius W. Stockton and Daniel Moore, of Pennsylvania, for extra services performed by them as contractors for carrying the mail under and by virtue of certain contracts therefor, by them alleged to have been made and entered into with them by William T. Barry, late Postmaster General of the United States, and for this purpose to inquire into and determine the equity of the claims of them, or any of them, for or on account of any contract or additional contract with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make them such allowances therefor as, upon a full examination of all the evidence, may seem right according to the principles of equity; and that the said Postmaster General be, and he is hereby, directed to credit such mail contractors with whatever sum or sums of money, if any, the said solicitor shall so decide to be due to them for or on account of any such service or contract; and the solicitor is hereby authorized to take testimony, if he shall judge it necessary to do so; and that he report to Congress at its next session the law and the facts upon which his decision has been founded: *Provided*, The said solicitor is not authorized to make any allowance for any suspension or withholding of money by the present Postmaster General for allowances or overpayments made by his predecessor, on route numbered thirteen hundred and seventy-one, from Philadelphia to Baltimore, for carrying the mail in steamboats, when it was not so carried by said Stockton & Stokes, but by the steamboat company; nor for any suspension or withholding of money as aforesaid, for allowances or overpayments made as aforesaid for carrying an express mail from Baltimore to York or Lancaster; nor for any suspension or withholding of money as aforesaid for allowances or overpayments made as aforesaid on route number thirteen hundred and ninety-one, from Westminster to McConnerston, as described in the improvement bid; nor for any suspension or withholding of money as aforesaid for allowances or overpayments made as aforesaid on the route from Baltimore to Wheeling, for running a certain daily line, Hagerstown and Wheeling, from the first of September, eighteen hundred and thirty-two, to the first of April, eighteen hundred and thirty-three, when the line referred to only run tri-weekly; nor for any suspension or withholding of money as aforesaid for allowances or

overpayments made as aforesaid on the route from Baltimore to Washington, under the contract of eighteen hundred and twenty-seven; but nothing in this proviso shall prejudice any application they make hereafter in reference to these routes, if they shall think it proper to make such application.

Approved July 2d, 1836.

I certify the above to be a true copy of the act of Congress, taken from the published acts of the first session of the twenty-fourth Congress of the United States. A. MATTER.

Exhibit C, referred to in plaintiffs' petition, p. 8.

Exhibit C—Report of Solicitor.

OFFICE OF SOLICITOR OF THE TREASURY,
November 12, 1836.

SIR: In obedience to, and in pursuance of, the authority of an act of Congress of the 2d July, 1836, entitled "An act for the relief of W. B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore," by which the Solicitor of the Treasury is authorized and directed to settle and adjust the claims of those gentlemen for extra services performed by them as contractors for carrying the mail, under and by virtue of certain contracts therefor by them alleged to have been made and entered into with them by William T. Barry, late Postmaster General of the United States, and for this purpose to inquire into and determine the equity of the claims, or any of them, for or on account of any contracts or additional contracts with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make such allowances therefor as, upon a full examination of all the evidence, may seem right, according to the principles of equity, I have had under consideration the claims of said Richard C. Stockton, under the contract made on the 15th of October, 1831, between said Stockton and Wm. Neill, of Columbus, Ohio, and the late Postmaster General, for the transportation of the mail on sundry routes, so far as relates to the carrying thereof, on routes 1,201, 1,389, and 1,390, and his, the said Stockton's, claims under the contracts additional thereto, alleged to have been entered into with the late Postmaster General, on which his pay has been suspended by the present Postmaster General.

Those claims, as made by Mr. Stockton, are as follows, to wit:

1st. For increased speed on said three routes from the 1st of January, 1834, to the 31st of December, 1835, according to the rate allowed at the Post Office Department, and paid for, from the 1st of January, 1832, to the 31st of December, 1833—that is, $1,687 50 per quarter, amounting to - -	$13,500
2dly. For extra horses and postillions on the route from Baltimore to Wheeling, from the 1st of Jan-	

uary, 1834, to the 31st of December, 1835, according to the rate allowed and paid for during the two previous years—that is, $2,453 per quarter, amounting to - - - - - - -	$19,624
3dly. For increased weight of mails, 50 per centum of $38,508, the amount of all the payments and allowances together, for services on the route from Baltimore to Wheeling, from 1st of January, 1832, till 31st December, 1835, being four years, at the rate of $19,254 per annum, or sixteen quarters, at $4,813 50 per quarter, amounting to - -	77,016
4thly. For interest upon such sums due from the Post Office Department, the payment of which has been suspended.	

I have made a full examination of all the evidence touching the abovementioned claims, and considered as well that which has been communicated by the Post Office Department, and the Secretary of the Senate, as that received from the claimants, and collected by depositions, and obtained from published documents, and have decided that there are equitably due to said Richard C. Stockton, on account of said claims, the following sums of money, viz:

For part of the first mentioned claim for extra services—that is, for five quarters, commencing with the 1st of January, 1834, and ending on the 31st March, 1835, at the rate of $1,687$\frac{50}{100}$ per quarter, the sum of - - - - - -	$8,437 50
For part of the second claim above mentioned—that is, for five quarters, commencing with the 1st of January, 1834, and ending on the 31st of March, 1835, at the rate of $2,453 per quarter, the sum of	12,265
For the part of the third claim above mentioned, on account of increased weight of mails—that is, 50 per centum on all payments and allowances, for thirteen quarters, commencing with the 1st of January, 1832, and ending on the 31st of March, 1835, at the rate of $4,813 50 per quarter, the sum of -	62,575 50
Making together, up to the 1st of April, 1835, when the pay of said Stockton was suspended by the present Postmaster General, the total sum of -	83,278 00
I have also decided that there is equitably due to the said R. C. Stockton, on account of all the above claims, for extra services for the 2d, 3d, and 4th quarters of the year, 1835, commencing with the 1st of April, and ending with the 31st December, 1835, the further sum (at the rate of $8,954 per quarter) of - - - - - -	26,862 00

I, therefore, in pursuance of the authority conferred on me by the aforementioned act of Congress, make allowance to said Richard C. Stockton, for his said claims up to the 1st of April, 1835, of the above sum of eighty-three thousand two hundred and seventy-eight dollars.

I also, by virtue of the same authority, make allowance to said Stockton, for his said claims for extra services from the 1st of April to 31st December, 1835, of the said sum of twenty-six thousand eight hundred and sixty-two dollars.

A claim for interest having been made, I have postponed the consideration of it until the equity of the other claims of the gentlemen, named in the title of the act, shall have been enquired into and determined.

I have the honor, &c.,

(Signed) VIRGIL MAXCY,
Solicitor of the Treasury.

To the Hon. AMOS KENDALL,
Postmaster General U. States.

Exhibit D, referred to in plaintiff's petition, page 8.

Exhibit D.

OFFICE OF THE SOLICITOR OF THE TREASURY,
November 23, 1836.

SIR: In obedience to, and in pursuance of, the authority of "An act of Congress of the 2d July, 1836, entitled 'An act for the relief of Wm. B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore,'" by which the Solicitor of the Treasury is authorized and directed to settle "and adjust the claims of these gentlemen, for extra services performed by them as contractors for carrying the mail, under and by virtue of certain *certain* contracts therefor, by them alleged to have been made and entered into with them by William T. Barry, late Postmaster General of the United States; and, for this purpose, to enquire into and determine the equity of the claims, or any of them, for and on account of any contracts, or additional contracts, with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make such allowances therefor as, upon full examination of all the evidence, may seem right according to the principles of equity," I have had under consideration the claims of Richard C. Stockton, under a contract of William T. Barry, late Postmaster General, with said Stockton, in pursuance of a proposition of the latter, bearing date the 11th March, 1833, for the transportation of a fast mail between Washington and Philadelphia; on which contract his pay has been suspended by the present Postmaster General. These claims, as made by Mr. Stockton, are as follows, to wit:

1st. For an additional daily mail from Washington city, via Baltimore, to Philadelphia, by land conveyance, for 90 days during the winter of 1833-'4, requiring 30 teams of 4 horses, at 6 dollars per day for each team	$16,200 00
2d. For like services, being for 100 days' service during the winter of 1834-'5, 30 teams, at $6 per team	1,800 00
Making, together, the sum of	$34,200 00

I have made a full examination of all the evidence touching the above mentioned claims, and considered as well that which has been communicated by the Post Office Department, and obtained from public documents, as that received from the claimants, and have decided that there is equitably due to the said Richard C. Stockton, on account of said claims, the sum of $34,200; and, therefore, in pursuance of the authority conferred on me by the aforementioned act of Congress, I do make allowance therefor, to said Richard C. Stockton, [of] the sum of thirty-four thousand two hundred dollars.

I have also had under consideration sundry other claims of the said Richard C. Stockton, as follows, to wit:

No. 1. For compensation for carrying the mail between Baltimore and Philadelphia, for one month during the spring of 1831, after the steamboats, in which the mail, by contract, was to have been carried, began to run - - - - - -	$1,240 00
2. For compensation to mail guards for the above period in 1831 - - - - -	458 33
3. Also for one month in the spring of 1832 - -	458 33
4. For furnishing arms and ammunition for 1831-'2 -	76 50
5. For amount paid for boat in Philadelphia, and for expenses at Havre-de-Grace - - -	170 00
6. For going round by Port Deposite, when the river Susquehannah was impassable - - -	294 00
7. For running second coach, with double mails, from Baltimore to Washington, when the mails were too heavy for one coach, 39 times during the winter of 1831, at $20 each - - - - -	780 00
8. For the same service, 36 times during the quarter ending 30th June, 1832, at $20 per trip - -	720 00
9. For the same service 46 times, at $20 per trip, in the quarter ending September 30, 1832 - -	920 00
10. For same services 41 times, at $20 per trip, in the quarter ending 31st December, 1832 - -	820 00
11. For same 39 times, at $20 per trip, in the quarter ending 31st March, 1833 - - - -	780 00

12. For same 49 times, at $20 per trip, in the quarter ending 30th June, 1833 - - - -	980 00
13. For same 54 times, at $20 per trip, in the quarter ending 30th September, 1832 - - -	1,080 00
14. For same 35 times, at $20 per trip, in the quarter ending 31st December, 1833 - - -	700 00
15. For same 5 times, at $20 per trip, in the quarter ending 31st March, 1834 - - - -	100 00
16. For the same 34 times, at $20 per trip, in the quarter ending 30th June, 1834 - - -	680 00
17. For ditto, ending 30th September, 1834 - -	680 00
18. For same 39 times, at $20 per trip, for the quarter ending 31st December, 1835 - - -	580 00
19. For same 14 times, at $20 per trip, in the quarter ending 31st March, 1835 - - - -	280 00
Making, together, a total sum of	$11,797 16

I have examined the evidence touching the above mentioned claims, as well that which has been communicated by the Post Office Department, and obtained from public documents, as that which has been laid before me by the claimant. The above claims I have decided to be equitable and just, with the exception of the one marked number six, amounting to $294, and do make allowance therefor to said Richard C. Stockton, of the sum of eleven thousand five hundred and three dollars and sixteen cents.

I informed you, in my letter of the 12th instant, that a claim had been made for interest.

The Post Office Department having decided that the additional contracts, under which Mr. Barry had made sundry allowances, were unauthorized by law, and, as a consequence, that the payments of such allowances were overpayments, determined to withhold from the persons named in the act of 2d July last the sums admitted to be due them quarterly, after the 1st April, 1835, under their regular contracts, in order to reimburse the sums thus overpaid.

Having, in pursuance of the authority conferred on me by said act, decided in favor of the equity of those allowances, it follows, as an incident to them, that interest is equitably due on the same withheld by the Department, from the several periods at which they became payable.

I have, therefore, decided that interest is equitably due Richard C. Stockton on the following sums, which appear from the account transmitted from your Department, purporting to be amount of payments to R. C. Stockton, on account of transporting the mail on certain routes therein named, from the 1st of April, 1835, to July 1st, 1836, after deducting therefrom the sum of $6,375 96, which was overpaid by the Department on the 1st April, 1835, that is to say:

1st. On the current pay under said Stockton's contracts, for the 2d quarter of 1835, amounting to -	$24,149 21
After deducting therefrom the balance overpaid to him on the 1st April, 1835 - - - -	6,375 96
Making -	$17,773 25
From the 1st August, 1835, to the 12th November, 1836, being for one year, three months, and twelve days, amounting to - - - - -	$1,367 94
2d. On same for third quarter of 1835, amounting to $23,594 72, from 1st November, 1835, to 12th November, 1836, being one year and twelve days -	1,462 22
3d. On same for the fourth quarter of 1835, amounting to $23,487 66, from 1st February to 12th November, 1836, being for nine months and twelve days -	1,103 27
4th. On same for first quarter of 1836, amounting to $18,458 72, from 1st May to 12th November, 1836, being six months and twelve days - -	590 17
5th. On same for the second quarter of 1836, amounting to $18,458 72, from 1st August to 12th November, 1836, being for three months and twelve days	313 29
Making the total amount of interest due R. C. Stockton, on current quarterly pay admitted by Department	$4,836 89

Having decided in favor of the equity of the allowances made by your predecessor, under contracts made by him with Richard C. Stockton, for transportation of the mail on the routes from Washington and Baltimore to Wheeling, I think it right, according to the principles of equity, to allow him interest upon the sums so decided to be due, from the several quarterly periods when they became respectively payable, that is to say:

1st. On the sum of $8,954, that became payable for the second quarter of 1835 on the 1st of August of that year; from that time to the 12th November, twelve days 1836, being one year three months and 12 days - - - - - -	$689 21
2d. On the same amount, that became payable for the third quarter of 1835 on the 1st November of that year; from that time to the 12th November, 1836, being for one year and twelve days - - -	554 90
3d. On the same amount, that became payable for the fourth quarter of 1835 on the 1st February, 1836; from that time to 12th November, 1836, being for nine months and twelve days - - - -	420 59
Amounting to the aggregate sum of	$1,664 70

A claim for interest on his current pay, suspended by the Department, has also been presented by Lucius W. Stockton, as follows:

1st. On $3,481 62, the amt. due him on contracts with Wm. T. Barry upon the 1st April, 1835, from the 1st May, 1835, to 20th October, 1835, when principal was paid, being one year five months and twenty days	$307 38
2d. On $496 87, being current pay for second quarter of 1835, which became due on the 1st August, 1835, from the 1st August, 1835, to 20th October, 1836, being one year two months and twenty days -	36 41
3d. On $478, being current pay for 3d quarter of 1835, which became due on the 1st November, 1835; from the 1st November, 1835, to 20th October, 1836, being eleven months and twenty days - - -	27 86
4th. On $478, being current pay for fourth quarter of 1835, which became due February 1st, 1836; from that day to 20th October, 1836, being eight months and twenty days - - - - -	20 69
Making a total amount of interest due Lucius W. Stockton, of - - - - - -	$392 34

I have examined the evidence touching the above mentioned claims of interest, and have decided that they are equitable and just; and do, therefore, make allowance therefor to the said Richard C. Stockton of the sum of four thousand eight hundred and thirty-six dollars eighty-nine cents, upon current pay withheld; and the sum of one thousand six hundred and sixty-four dollars and seventy cents upon the pay withheld upon the claims for allowance for extra services on the routes between Washington and Baltimore, from the 1st of April, 1835, to the 31st December, 1835. (Rec. xxxvii—3.)

I have also examined the evidence touching the claims of said Lucius W. Stockton for interest, and have decided that it is equitable and just, and do therefore make him an allowance therefor of three hundred and ninety-two dollars and thirty-four cents.

I have the honor to be, &c.,

V. MAXCY, *Solicitor of the Treasury.*

To the Hon. A. KENDALL, *Postmaster General U. States.*

Report of Virgil Maxcy.

Report of Virgil Maxcy, referred to in defendant's 1st exception, p. 40.—Exhibit E.

Exhibit E, referred to in plaintiffs' petition, p. 8.

OFFICE OF THE SOLICITOR OF THE TREASURY,
December 26, 1836.

In obedience to the act entitled "An act for the relief of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and

Daniel Moore," I have the honor to submit to Congress the following report:

By the act referred to it is enacted, that the solicitor be, and he is hereby, authorized and directed to settle and adjust the claims of William B. Stokes and Richard C. Stockton, of Maryland, and Lucius W. Stockton and Daniel Moore, of Pennsylvania, for *extra* services performed by them as contractors for carrying the mail, under and by virtue of certain contracts therefor, by them alleged to have been made and entered into with them by William T. Barry, late Postmaster General of the United States; and for this purpose to inquire into and determine the equity of the claims of them, or any of them, for, or on account of, any contract or additional contract with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make them such allowances therefor as, upon a full examination of all the evidence, may seem right, according to the principles of equity; and that the postmaster be, and he is hereby, directed to credit such mail contractors with whatever sum or sums of money, if any, the said solicitor shall so decide to be due to them for, or on account of, any such service or contract; and the said solicitor is hereby authorized to take testimony, if he shall judge it necessary to do so; and that he report to Congress the law and the facts upon which his decision has been founded.

The terms of this act are very broad, and allow a very large and liberal discretion in the exercise of the powers conferred on me. This circumstance, while it imposes a painful responsibility on account of the great amount of claims in question, relieves me, at the same time, from the necessity of entering at all upon the question, whether the allowances made by the late Postmaster General to the gentlemen named in the act were, or were not, in strict conformity to law. I am directed to inquire into, and determine the equity of, the claims presented to me, and to make such allowances therefor as, upon a full examination of all the evidence, may seem right according to the principles of equity. In other words, I am to inquire, first, whether the services for which compensation is claimed were performed, and the United States had the benefit of them, in pursuance of contracts with the late Postmaster General, or in compliance with orders made by him, which imply an obligation to make compensation; and, in the next place, whether the compensation claimed is reasonable and just. The act makes some specific exceptions of claims, and forbids me to make any allowance for them, and, moreover, imposes on my jurisdiction one general limitation, and requires that the claims presented shall be on account of contracts "on which the pay of the contractors has been suspended by the present Postmaster General."

In making up my opinion as to the amount of compensation to be awarded, I have felt great respect for the decisions of the late Postmaster General, made, as they were, under fresh information

as to all the circumstances existing when the allowances were made; but the act does not restrict me to the sums allowed by him, but only requires that the allowances, whether greater or less, should be such as "seem right," in my judgment, according to the principles of equity. Nor do I consider my action restricted, by the terms of the act, to a review of his allowances; on the contrary, the terms of the act clearly impose upon me the duty of deciding upon all claims presented by the persons named in it for services under contracts with the late Postmaster General, whether those claims were specifically presented to him, or to the present [Postmaster] General for allowances, or not; provided they were services rendered in pursuance of contracts with the former, on which contracts the pay of the contractors had been suspended by the latter.

With such views of the nature of the duty required, I proceeded to the execution of it soon after the termination of the last session of Congress, by requesting the Postmaster General, the Secretary of the Senate and Clerk of the House of Representatives, and the claimants, to transmit to my office such documents and proofs as related to the claims upon which I was to decide. In compliance with these requests, the Postmaster General, the Secretary of the Senate, and the claimants, furnished me with a great variety of papers. In a few instances, I have felt it my duty to cause testimony, in addition to that derived from all these sources, to be taken.

The claims first presented were made for extra services performed on the routes from Washington and Baltimore to Wheeling, being numbered 1,211, 1,389, and 1,390. They were—

1st. For increased expedition, &c.

2d. For extra horses and postillions, &c.

3d. For increased weight of mails.

I shall consider these three clauses in the order in which they are stated.

By the proposals advertised, until the 26th September, 1831, for carrying the mail, daily, between Baltimore and Wheeling, from the 1st January, 1832, to the 31st December, 1835, in four-horse post coaches; three days and three hours were allowed for going out, and three days and 1½ hours in returning.

By a contract bearing date the 15th of October, 1831, Richard C. Stockton and William Neil bind themselves to carry the mail, according to the above proposal, for a sum which is ascertained, by an apportionment between the routes in question and the other routes contracted for, to be $4,550.

They bound themselves, also, if required by the Postmaster General, to carry a daily mail in 2½ days, and to run also a tri-weekly line to carry the way mails, for the additional compensation of $8,950.

But, in consequence of the solicitation of a number of members

of Congress, they propose an increase of speed on sundry routes, by a letter of the 23d December, 1831, for the annual compensation of $15,988, of which the portion of the routes from Baltimore and Washington to Wheeling, in which they were to carry the mail in two days in summer, and two and a half in winter, was per annum $6,750; or, $1,687 50 per quarter. The late Postmaster General accepted this offer, and ordered the service on the 1st of January, 1832.

This increased speed was accomplished in the time stipulated, until it was rendered impossible by the breaking up of the National road for repair by the Government, when the Postmaster General allowed from 6 to 12 additional hours, without intending to diminish the contractor's pay, but merely to make an allowance in respect of time, equivalent to the delay occasioned by the obstructions thus created by the Government itself. This is proved by the deposition of the Hon. Andrew Stewart, of Pennsylvania, and the Rev. O. B. Brown, then superintendent of mail contracts.

The former, in his affidavit, says: "I furthermore certify, that great obstacles were interposed by the agents of the Government in taking up and repairing the Cumberland road, so much so as to render it utterly impossible to effect, with any force, the transportation of the mail over it, in stages, with the required speed; first, by taking up the old bed, and covering its surface with large loose rock and stone, and afterwards, when repaired, in placing logs, stumps, brush, and stones on the alternate sides of the road, at short distances, varying from forty to eighty feet apart, so as to force the carriages to run zigzag across the road, to prevent the cutting of it into ruts, and to pack the stone evenly. This rendered it impossible to drive rapidly without hazarding the lives of the passengers, and the security of the mail stages at all times, especially in the night. The difficulties were represented to the department by myself and others, and an order was made in consequence, extending the time allowed, I believe, about twelve hours. This I considered at the time, and now consider, altogether inadequate to the unavoidable loss of time, occasioned by the obstructions placed in the way of the mail by the acts and agents of the Government, and compelled the contractors to increase the speed on other portions of the road where these obstructions did not exist, to make up the time lost, after the order giving the twelve hours addition. These facts came under my personal knowledge and observation in frequently passing over the road in the stages, and otherwise at the time."

Mr. Brown, in his deposition, marked No. 24, says: "That in the contract of R. C. Stockton & Co., for transporting the mail between Baltimore, Washington City, and Wheeling, via Frederick, Cumberland, and on the National road, the contractors, for certain allowances of compensation, obligated themselves, for January 1st, 1832, to run the mail through in two days in summer, and 2½ days

in winter, from Baltimore to Wheeling; or in four days from Baltimore to Cincinnati in summer, and 4½ days in winter; that whilst they were performing the service at this rate, it was shown to the Post Office Department that the Government itself, through the War Department, had broken up a part of the road, for the purpose of making repairs on the same, by means of which it became impracticable, without immense loss and danger, to run in that time, and that the contractors, in essaying to keep the full speed, had broken and destroyed several coaches, and put in jeopardy the lives of the passengers and drivers; that the Postmaster General, in consideration of the obstructions having been occasioned by the Government itself, conceived it but equitable on the part of the department to allow the contractors so much time beyond the two and 2½ days, as to enable them to carry the mails through with the same labor and expenses that would have been required for performing the same service in the two and 2½ days, if the obstructions had not existed. With this view the time was extended. To what period I do not recollect; but several hours additional time were allowed—I believe from six to twelve hours. This additional time I know to have been allowed purely on account of the obstructions which the Government had occasioned; and it was intended to be no more than equivalent to the delays which such obstructions necessarily occasioned. The Postmaster General so expressed it to me at the time, and never intimated an intention or thought of diminishing the compensation of it."

The concurring testimony of both these gentlemen is confirmed by the schedules, which extend the time at various periods between the 22d of December, 1832, and the 31st of December, 1835, from six to thirteen hours beyond the two and the two and a half days, which were called the *increased speed* for winter and summer.

I have been more particular in quoting the testimony on this point at large, because the time of the increased speed being thus prolonged, it has been confounded with the "improved speed," proposed in the original bid, and inserted in the contract, which was two and a half days for the transportation of the mail between Baltimore and Wheeling; and it has, in consequence, it is presumed, been alleged that the "increased speed" was not continued after the year 1833, because, after that year, no speed greater than two and a half days, between Baltimore and Wheeling, was required by the schedules, which was the "improved speed" proposed in the original contract. But it has appeared to me that the same equitable considerations which induced the late Postmaster General to add 12 hours to the time of "increased speed," would, if the proposition of December, 1831, had never been made, have induced him to allow 12 additional hours for the "improved speed," making it three days instead of two and a half. I have therefore considered the time of two days and six hours, and two and a half days, in which the mail was carried at different periods,

after the road was broken up between Baltimore and Wheeling, as increased speed, within the equity of the stipulation of December 23, 1830.

It has been alleged, also, that the allowance for "increased speed" was retrenched, and the service not required or performed after the first of December, 1833. For proof of this, reference has been made to an order of retrenchment entered in red ink on the margin of the contract; and to the fact that there is no written evidence in the Post Office Department of the restoration of this allowance after that day. The depositions also of Mr. Hobbie, assistant Postmaster General, and Mr. Suter, pay clerk, marked exhibits Nos. 5 and 6, were taken, to show that the late Postmaster General never intended to restore the allowance for "*increased speed*" and "extra horses and postillions."

In opposition to this negative testimony respecting the restoration of the allowance in question, after the retrenchment of them in December, 1833, there were laid before me depositions of witnesses of high and unimpeached character, which prove, affirmatively, in the most positive and direct manner, that the allowances retrenched were restored; that, at the earnest solicitation of one of them, the services, though the allowance was retrenched, were unintermitted, relying upon the necessity of their being soon made apparent; that the strongest representations of their indispensable necessity were soon after made by them and numerous members of Congress; that Mr. Barry was entirely convinced of their necessity; expressed his gratification on hearing that the services had been continued by the contractors; and after several interviews and consultations with his friends, restored all the extra allowances that had been retrenched; that *the fact of their restoration had, by the authority of the Postmaster General, been communicated to the contractors;* and when, afterwards, the order of restoration was construed to part of the allowances and services only, the Postmaster General himself, in a letter to the contractors, assured them "it was intended to direct them to continue the improvements already on the road to Wheeling as indispensable." Admitting, therefore, that the late Postmaster General, as testified by Mr. Hobbie and Mr. Suter, said, in a moment of forgetfulness, more than a year afterwards, that he did intend not to restore the allowances for increased expedition, and extra horses and postillions, after they were retrenched in 1835, yet, inasmuch as a contrary declaration to Major Carneal and Mr. Stewart was, by his authority, communicated by them to the contractors soon after the retrenchment, in consequence of which they continued the increased expedition and the extra horses and postillions, the contractors have clearly an equitable title to remuneration for those services, the United States having received the benefit of them. (See the depositions of Major Thos. D. Carneal and the honorable Andrew Stewart, of Pennsylvania, in marked exhibits Nos. 3, 7, 8, and 9.)

The testimony is equally explicit and positive, and the witnesses much more numerous, many of them postmasters and tavern-keepers on the road, that no order of discontinuance of the "increased speed" having been given by the present Postmaster General, it was actually continued to the 31st December, 1835. (See exhibits Nos. 10, 11, 12, 13, 14, 15, 16, and 17, the last being the solicitor's letter to the Postmaster General, inquiring whether any notification was given to the contractors that these services might be continued after the 1st April; and No. 18, the Postmaster General's reply, that not considering the services for which the allowances by the late Postmaster General were suspended in the account of Messrs. Stockton and Stokes, or R. C. Stockton, on the routes from Baltimore and Washington to Wheeling, as ever legally authorized, the department has given no notification to these gentlemen to discontinue those services, other than declining to pay for them, on the grounds stated in the papers" before the solicitor.)

The contractors allege that, after the decision of the Postmaster General not to pay on the ground of want of legal authority, they did not present any subsequent claim for the like services afterwards; but receiving no order to discontinue them, they continued to perform them, relying upon the justice of Congress to supply the defect in the authority by which the contracts were made with them.

The testimony above cited is so strong, as to force the conviction on my mind, that the services in question were continued, though the department, as stated in the last cited letter, was not aware of any evidence of the fact—the contractors furnishing none—as they presented no claim for them until the expiration of the contract on the 31st December, 1835; I was constrained, therefore, to decide that the compensation should extend, without intermission, to that time; and being satisfied of its reasonableness, by the depositions of Moore and Fales, John C. Hall, and R. L. Barry, marked exhibits Nos. 19, 20, and 21, made allowance at the same rate as had been made by Mr. Barry, that is $1,687 50 per quarter, from the 14th January, 1834, to the 31st December, 1835, amounting in all to $13,500.

The second claim was for an allowance made by the late Postmaster General for extra horses and postillions.

Immediately after the commencement of the contract, it was found necessary, in consequence of the breaking up of the National road, to employ six horses in each coach in going over the principal mountains. The whole number of extra horses thus rendered necessary was 44. Postillions to the number of 22 also became necessary. As this additional expense could not have been contemplated when the contract was made, the late Postmaster General thought it right, on application of the contractors, to be paid for this service, to make an allowance therefor, $2,453 per quarter.

This will appear from the memorandum in red ink on the margin of the contract, marked exhibit No. 1, and also from exhibit No. 22, and the reasonableness of the allowance may be judged of by reference to estimates, marked exhibits Nos. 19, 21, 23.

This allowance was retrenched in the autumn of 1833, but was again restored in the latter part of January, 1834, at the same time with the allowance for increased expedition, the Postmaster General having been convinced of the necessity of the extra horses and postillions. (See exhibits Nos. 3, 7, 8, and 9.)

The service also of these extra horses and postillions was continued to the 31st December, 1835, no order of discontinuance having been made by the present Postmaster General. (See exhibits in support of the claim for increased speed, marked exhibits Nos. 10, 11, 12, 13, 14, 15, 16, 17, and 18.)

The credit for the pay for extra horses and postillions was suspended from the 1st January, 1834, and the proof being full to the *restoration* of the allowance after the retrenchment in the latter part of 1833, and the continuance of the service to the 31st December, 1835, I had decided, being satisfied that the allowance by the late Postmaster General was reasonable, to conform to it, and to allow for this claim at the rate of $2,453 per quarter, amounting in the whole to the sum of $19,624.

The third claim presented by the contractors, is for an additional allowance of fifty per cent. on their pay, on account of increased weight of mails, from January 1st, 1832, to 31st December, 1835, a period of four years. Their pay was at the time $38,508 per annum, fifty per cent. of which is $19,254 per annum, or $4,813 50 per quarter—the whole claim amounting to $77,016.

It appears to be fully proved, that in consequence of the increased expedition with which the mail was carried on the route from Baltimore to Wheeling, the heavy mails for the west, from the north to the east, beyond Philadelphia, which had, before 1832, been carried on the route from Philadelphia and Pittsburgh, were drawn upon the route from Baltimore and Washington, to Wheeling; that at the period when the contract was made, the mail from Baltimore and Washington to Wheeling averaged in weight about one hundred pounds. The fair interpretation of the contract, being the meaning entertained at the time of making it by both the contracting parties is, that the contractors were to carry a mail, such as it was at the time of entering into the contract, with such addition thereto, as should arise out of the natural growth of the business of the country. But, in the case under consideration, there was a sudden increase from one hundred to two thousand pounds, which could not be accounted for from gradual and natural augmentation, but was attributable only to the cause above mentioned. Such an increase could not have been anticipated; and was not, therefore, in the contemplation of the parties when the contract was made. Justice required, therefore, an additional allowance of compensation for service in

transmitting the mail, which had thus increased in weight from ten to twenty fold.

The contractors propose to the Postmaster General, in the month of March, 1833, to make the requisite increase of their means of transportation, and apply for an additional allowance of 25 per cent. on their pay, to cover expenses. The Postmaster General directed that the services should be required, but suspended a decision on the compensation. Further experience taught the contractors, that 25 per cent. increase of compensation would not cover the increased expenditure, and, in the beginning of June following, they asked, instead of 25 per cent., for an additional allowance of 50 per cent., which was granted by the late Postmaster General from the beginning of the contract, and the necessary instructions given to the treasurer and pay clerk. Payment of all extra allowances in question, for "increased expedition," extra horses and postillions, and "increased weight of mails," *and* well as the amount due under the original contract, continued to be made by the Post Office Department until the 1st of April, 1835.

This is proved by the account of the department with Richard C. Stockton, marked exhibit No. 31, which embraces all his accounts, continuously, from the 1st October, 1829, to the 1st April, 1835, which would have left the department, after allowing all the amounts claimed by the contractors, in advance to them, (the) sum of $6,375 96.

The present Postmaster General, soon after he came into office, suspended from the credits of the account the allowance for increased expedition, and extra horses and postillions, from the 1st January, 1834, to the 1st April, 1835, and the whole allowance of 50 per cent. for increased weight of mails, from 1st of January, 1832, to the 1st of April, 1835, which made the contractors, at the date, debtors, for advances under their several allowances, to the amount of $129,487 42. (See the amount, exhibit No. 31.)

Having ascertained the above to be the state of facts, I proceeded to examine, in pursuance of the directions of the act for the relief of the contractors, the testimony which was laid before me, touching the reasonableness of the allowances made by the late Postmaster General. The testimony is contained in exhibits Nos. 19 and 21, herewith submitted.

A letter addressed to me by one of the contractors, containing statements illustrative of the expense of the augmented service devolved on the contractors, calculated on the basis of charges to individuals for transportation, is also submitted, exhibit No. 32.

Having given a mature consideration to all the circumstances of the case, and made an impartial examination of the evidence before me, I have arrived at a deliberate conviction that the allowances by the late Postmaster General were just—and large as, without examination, they appear to be, yet no more than just. I have, therefore, decided, that according to the principles of equity, the

contractors are entitled, as their services were continued up to the 31st December, 1835, to receive the whole amount of their claim, from January 1st, 1832, to December 31st, 1835, being 4 years, at the rate of $19,254 per annum, amounting together to the sum of $77,016.

The fourth claim presented by the contractors, consisting of two items, was for the transportation of an additional daily mail from the city of Washington, via Baltimore, to Philadelphia, by land conveyance, for 90 days, during the winter of 1833–'34, requiring 30 teams of 4 horses each, at $6 per day for each team, of $16,200, and for the same during the winter of 1834–'5, for 100 days, at the same rate, $18,000.

It is known, as a part of the history of the times, that, in the winter of 1832–'3, the editors of sundry newspapers in New York united in the establishment of an express between Philadelphia and New York, which out-traveled the United States mail. This circumstance bringing reproach on the Post Office Department, it was determined by it to employ Mr. Green, postmaster of Boston, and Mr. Bates, assistant postmaster of New York, to arrange a plan, if practicable, for a fast mail between Washington and Portland, which they accordingly did, and Richard C. Stockton, by a proposal to the Post Office Department, bearing date the 11th March, 1833, and marked exhibit No. 34, engaged to carry it between Washington and Philadelphia in 20 hours. This proposal was accepted by the late Postmaster General, but for want of the necessary data for calculating the expense, ten thousand dollars were advanced towards it, and the amount of ultimate compensation was postponed for future consideration, when an experiment should furnish them.

At the time of making this proposal for carrying the fast mail, Mr. Stockton was carrying the mail at a different speed on the same route under a contract with the department, bearing date the 15th October, 1831, and marked exhibit No. 36. There seems to be no dispute about the service, which is the object of the present inquiry, being performed, nor of its being performed well. But a question was raised whether, under the above mentioned contract, the contractors were bound to carry two daily mails between Baltimore and Philadelphia, in the winter season, or not. If they were, they would be entitled to compensation as it regards the fast mail, not for a new line, but for an improvement of speed only in one of their daily lines. If they were not bound to keep up two daily lines, this was entirely separate and distinct service, not stipulated for in the contract of October 15, 1831, but only in the proposal of 11th March, 1833.

The testimony of Mr. Barry, in his statement marked exhibit No. 24, and of O. B. Brown, in his letter of the 10th January, 1835, to Messrs. Stockton and Stokes, marked exhibit No. 35, leaves no doubt that the distinct understanding between the department and the fast mail, in the winter of 1833–'4 and 1834–'5, between

Washington and Philadelphia, was a separate and distinct service from that stipulated in the contract of October 15, 1831, and, therefore, entitled to full compensation for the duty performed, and not a mere additional or extra compensation for an increase of speed on an established line. If any other document were necessary to sustain this position beyond all controversy, that document is supplied in the clear, able, and conclusive opinions and arguments of Roger B. Taney, now chief justice of the United States, marked exhibit No. 37, in which the late Postmaster General, in his statement above cited, says, that this opinion was in perfect coincidence with his. He accordingly allowed for the service in the winter of 1833–'4, the sum of $11,740 for the route between Baltimore and Philadelphia, and $4,460, between Washington and Baltimore; making, together, the sum of $16,200, being at the rate of $6 per day for each of the 20 teams of 4 horses each, which was the number the service required for 90 days, which was the length of service in that winter. He also allowed the same sum for the like services in the winter of 1834–'5.

The fact being established, that the subject of the present enquiry was a service in pursuance of a contract with the late Postmaster General, and the fact of the pay under that contract being suspended by the present Postmaster General being apparent from the account rendered by the Post Office Department, marked exhibit No. 31, it remains to inquire what allowance for the service is right, according to the principles of equity.

It is proved by the depositions of Alexander M. Cumming, at the time general agent of the line of Messrs. Stockton & Stokes, between Baltimore and Philadelphia, and of Messrs. Malter & Scott, clerks in their office at Baltimore, marked exhibit No. 39 and 40, that 30 teams, of 4 horses each, were employed in the transportation of the *fast mail*, in question, between Washington and Philadelphia, and that the service continued in the winter of 1833–'4, for ninety days, and in 1834–'5, for 100 days.

It is proved by the depositions of Charles Goddard, N. B. Woodward, Hugh Cunningham, A. M. Cumming, and Alexander Scott, marked exhibit No. 41, 42, 43, and 44, that $6 per diem for each team, especially when is taken into consideration the great distinction of stock, from high speed, bad roads, and bad weather, is a reasonable rate of charge. Applying this rate of charge to the service rendered, for 90 days, in 1833–'4, and the amount will be $16,200, which Mr. Barry allowed.

It appears that the same sum was allowed for the service performed in the winter of 1834–'5; and, in directing the payment of it, he says, to Mr. Suter, the pay clerk, "allow the credit for sixteen thousand two hundred dollars, in conformity with the principles of the former decision, agreeably to the opinion of Mr. Taney." This shows that his intention was to allow the same rate for the service of 1834–'5, as he had done for that of 1833–'4, as the service in the

year 1834–'5 continued ten days longer than in 1833–'4. Justice requires, if $6 per day, for each team, be a reasonable allowance, which I think is abundantly established by the above depositions, that $1,800 should be added to the amount allowed for 1833–'4, making $18,000, which I have accordingly awarded. It is presumed that Mr. Barry had not the testimony as to the number of days before him, or, as he adopted the principle of the first decision, made a mistake through inadvertence.

The entire award, therefore, for this claim is $34,200.

The contractors next presented for allowance a number of claims contained in the following account, namely:

1831. *The Post Office Department, to Richard C. Stockton.* DR.

For compensation for carrying the mail between Baltimore and Philadelphia, for one month, during the spring of 1831, after the steamboats in which the mail, by contract, was to have been carried, had began to run					$1,240 00
For compensation for mail guards for the above period, 1831					458 33
1832—for ditto for one month in the spring of 1832					458 33
Furnishing arms and ammunition for 1832					76 50
Expenses paid for boat in Philadelphia, and for expenses at Havre de Grace					170 00
Going round by Port Deposite, when the river Susquehannah was impassable					294 00
Running second coach, with double mails, from Baltimore to Washington, when the mails were too heavy for one coach, 39 times, during the winter of 1831, at $20 each					780 00
For same service, 36 times, and ending 30th June, 1832, at $20 per trip					720 00
For same, 46 times, ditto 2d, ending 30th Sept., 1832					920 00
Do	41	do	do	31st Dec'r, 1832	820 00
Do	39	do	do	31st March, 1832	780 00
Do	49	do	do	31st June, 1833	980 00
Do	54	do	do	31st Sept'r, 1833	1,080 00
Do	35	do	do	31st Dec'r, 1833	700 00
Do	5	do	do	31st March, 1834	100 00
Do	34	do	do	30th June, 1834	680 00
Do	34	do	do	30th Sept., 1834	680 00
Do	39	do	do	31st Dec'r, 1834	780 00
Do	14	do	do	31st March, 1835	280 00
					$11,797 16

The first item of the above account is for carrying the mail between Baltimore and Philadelphia, for one month, during the spring of 1831, after the steamboats, in which the mails, by contract, *was* to have been carried, had began to run, $1,240.

The late Postmaster General, in his statement marked exhibit No. 24, says, in reference to this allowance by him, that "by contract agreement, they (the contractors) were entitled to a certain sum for carrying the great mail during the suspension of steamboat navigation, other provisions being made for its transportation during the time of steamboat navigation. After steamboat navigation commenced, the irregularity of the trips required the mail still to be carried by land for a time—in consequence of which, the contractors were compelled to run their stages during such time, and without passengers, as the passengers were carried by the steamboats. It appeared, therefore, reasonable to make the allowances."

A similar allowance was made from the 1st of April to the 15th of May, 1832, of which the late Postmaster General, in his report under the act of 15th June, 1832, Senate documents, No. 422, page 204, says: "The contract of Stockton & Stokes, for transporting the great daily mail between Baltimore and Philadelphia, in 1832, did not require them to carry it by land when the steamboats were running; but their departure from Baltimore was before the arrival of the great mail from the south, which rendered it necessary for them to keep up the great coach line during that period, for which they were allowed $1,860 additional."

This last allowance is carried to the credit of Stockton & Stokes' account. See No. 3, in red ink, exhibit No. 31. But this same account shows that no credit was given for the allowance of $1,240, above claimed. The exhibit No. 46, in the first item of the account, shows that it was allowed by Mr. Barry.

The Rev. O. B. Brown (see exhibit No. 47) testifies more at large to the same facts as the Postmaster General; and, amongst other things, expressly to the fact of the contractors being required to perform the service; and the affidavits of Huston, Malter, and Scott, (exhibits No. 48,) prove the services.

The reasonableness of the charge is established as follows: By the contract for carrying the great mail between Baltimore and Philadelphia, during the winter months, the contractors were entitled to receive, for the winter quarter, $6,234, or, per month, $2,074 66⅔; for the summer, while the steamboats carried the great mail, per quarter, $2,594, or, per month, $834 66⅔. The balance, after deducting a month's pay, according to the summer rule, is $1,240. The contractors being entitled to the pay for a month of winter service, and having been paid for a summer month's service, were entitled to receive the difference, that is, $1,240; and Mr. Barry accordingly directed them to be credited with it, and thinks it right. According to the principles of equity, I awarded it to be paid accordingly. See the contract, exhibit No. 36, and exhibit No. 31,

(item indicated by No. 4, in red ink, to show that $6,224, was part of the whole pay stipulated in the contract, apportioned to the route between Baltimore and Philadelphia, per quarter, in winter, and $2,504, per quarter, in summer.)

The next two items of claim are for mail guards in spring of 1831, during the month in which the steamboats were running irregularly, at the same rate as allowed by Mr. McLean, and also by Mr. Barry - - - - - - - $458 33

Same in the spring of 1832 - - - - 458 33

For furnishing arms to mail guards in spring of 1831 - 76 50

To amount paid for boat, by order of the department, (voucher surrendered) - - - - - 170 00

To going round by Port Deposite, when the river was impassable at Havre de Grace, 21 times, at $14 per trip 294 00

The two first of the above items were, I think, claimed by Messrs. Stockton and Stokes, and allowed by Mr. Barry, from an error in calculation; being satisfied that one of them was included in the sum of $1,240 above allowed, and the other in a credit given in Stockton's general account of $1,860. The manner of ascertaining $1,240 to be the balance due on the service for carrying the mail in 1831, one month after the steamboats commenced their running, is by taking one-third of $6,224, the winter quarter's pay, which included the pay for guards—one-third is $2,074 66—and of course includes pay for guards during that month. After deducting from it one month's summer pay, when no guards were used, which had been received, there was left a balance of $1,240, of which the charge for guards is a part. The credit for $1,860, above mentioned, in 1832, is ascertained by a calculation made on the same basis, and includes, of course, pay for guards. Both of these items, therefore, have been disallowed, as have also the three items following, for want of vouchers.

The principal items of this account consist of charges for running two coaches instead of one, to transport the whole of the great mail between Baltimore and Washington, it being too large to be carried in one coach. These items make up by far the greater part of the sum of $6,423 46, which is the last amount suspended in the general account with R. C. Stockton—see exhibit No. 31. Of these, the late Postmaster General makes the following remarks: "The last case of suspension is that of allowance for double lines of stages from Baltimore to Washington, on special occasions, when the mails which arrived at Baltimore by steamboat for Washington *now* too large and heavy to be brought on by one line of stages. There was nothing in this contract which required them to run double lines at any time. They were required, whenever it should be ordered, to carry three mails a day between the two cities, as they were, for the accommodation of passengers, running lines of stages at three different hours of the day; but to run two lines of stages at the same hour, for the purpose of bringing the entire mail, was what

they were not bound to do, and what could not be done without expense to them, which the contract did not compel them to incur. When it was found that the mail was sometimes too great to be carried in one line, (a circumstance which had never before occurred, and which was not contemplated when the contract was made,) the contractors proposed to leave a part of it until their next line in order should run. This they were prohibited from doing, but directed to bring the entire mail at once and without delay, whatever force it might require, or whatever number of lines it might employ. This order they obeyed, and on such occasions it appeared reasonable to make the allowance. Such allowance had been made and paid to them prior to the last decision; and the last decision was not for a new allowance, the principle being already settled, but it was rather an approval of the testimony upon which the performance of the service had been established." (See exhibit No. 24.)

In the statement preceding Mr. Glenn's argument, which is sworn to by the Rev. O. B. Brown, it is said, "that Messrs. Stockton and Stokes were contractors for carrying the mail from Baltimore to Washington city. It sometimes happened that the mail which arrived by steamboat at Baltimore from Philadelphia was so large and heavy that one line of stages could not carry the whole of it to Washington; and the contractors proposed, in such cases, to leave a part of it till their next line in order should run, as their contract bound them to carry the mail three times a day when the Postmaster General should require, but it did not require them to run two lines of stages at one and the same time. They were prohibited, however, by the department, from ever leaving any part of the mail, but were required to carry it all at the same time, though it might require more than one line of stages to do so. With this requisition they complied, and claimed compensation for the additional line of stages in such cases. The Postmaster General, about three or four years since, allowed their claim, and made the payment. The contractors continued to perform the same services whenever the weight of the mail was such as to require it, expecting, of course, the same allowance to have been made, the principle having already been settled by the Postmaster General, and their drafts on the department, which were accepted and paid, were based upon conviction that their allowance could not be withheld; but they were not formally admitted by the Postmaster General till the spring of the present year, (1835,) when he decided to make the allowance. In this, as in all the preceding cases, (meaning the extra allowance considered in the previous part of this report,) the payments have been actually made."—(See the account of the Post Office Department with Richard C. Stockton, marked exhibit No. 31.)

This account, which the late Postmaster General directed to be passed to the credit of Stockton & Stokes, amounts to $6,423 46;

which amount has been suspended from their account by the present Postmaster General. The same items which make up this amount are embraced in the account containing the class of claims now under consideration; but this latter account contains a considerable number of additional and subsequent charges for extra trips from Baltimore to Washington, of the same kind as those allowed for by Mr. Barry, in exhibit No. 46, and which I consider as performed under a standing contract with the late Postmaster General, whenever the mail delivered by the steamboat from Philadelphia at Baltimore should be too large to be carried in one stage; and therefore entitled to an award from me, if the amount charged be a reasonable and equitable compensation for the service actually performed.

That the services were performed, is proved by the affidavits of Alexander A. Cumming, marked exhibit No. 50; and that the charge per trip of $20 is reasonable, is established by the depositions of Dennis A. Smith and David Barnum, two experienced mail contractors—marked exhibit No. 51.

I have therefore deemed it right to allow for the whole amount of the account containing the class of claims now under consideration, with the exception of the five items following the first, amounting to $1,457 16. The amount allowed is $10,340.

The contractors have presented for allowance a claim of interest upon such sums as, being due to them, have been retained by the authority of the Postmaster General.

It is true, as a general rule, that the United States do not pay interest upon sums due to individuals, though in many cases they demand it of them. This rule is not based upon any idea of there being one rule of justice for the Government and another for the citizen. It is founded on the idea that the Government is always ready to pay its debts, and if those having claims against it do not present them, duly authenticated for payment, it is owing to their own negligence that they do not receive their money; there are therefore no allowed interests. But when the Government has detained money and refused to pay it, justice requires, upon its being ascertained afterwards that it was justly due, that the Government should do its creditors what it, when creditor, requires of its debtors, and pay interest for the money thus due for the time it has been retained.

Therefore, the general principle may be readily admitted; yet there was some difficulty at first in deciding upon the manner in which it ought to be applied in the equitable settlement of the claims in question.

The present Postmaster General had decided that certain large allowances made to the claimants by his predecessor were unauthorized by law; and as this amount had already been paid up to the first of April, 1835, he considers it as an over-payment, and retains afterwards in his hands all the current pay of the contractors which was

allowed to be legal, as it became due at the end of each quarter, until the sums thus claimed to be over-payments were reimbursed to the department.

Congress, to whom the contractors petitioned for relief, passing by the question whether the allowances made by Mr. Barry were authorized by previous enactments or not, direct that their accounts, the United States having received the benefit of their services, should be settled on principles of equity, and referred the matter to the Solicitor of the Treasury. That officer, on the proof laid before him, decides, with some small variations, that the allowances made by the late Postmaster General were no more than a just and equitable remuneration for the services rendered.

The contractors had received their money, but were compelled to refund it in the manner above exhibited; and they presented a statement (marked exhibit No. 52) of sums of interest which they were obliged to pay to sustain themselves after the suspension of their regular dues, which statement is proved by the oath of their head clerk, A. Malter. If the controversy had been between two individuals under like circumstances, what would a court acting upon principles of equity and sound morality decide? It is believed but one answer can be made—the return of the several sums retained, with interest from the time of retention.

Believing that the spirit, and letter, indeed, of the act required the adoption of the same rule, I have, after mature consideration, awarded interest on the several quarterly sums which were retained by order of the department, from the time they respectively fell due until the date of the award. The whole amount of the sums of interest thus awarded was $6,501 59 to Richard C. Stockton, and $392 34 to Lucius Stockton. (See account of the quarterly pay of the contractors, marked exhibit No. 53, and the award of November 23d, 1836, marked exhibit No. 55.)

In conclusion, I beg leave to remark, respecting the large claims which I have been considering, that while the examination of the committees of the two Houses of Congress into the affairs of the General Post Office was in progress, in the winter of 1834–'5, I partook of an impression, then by no means uncommon, that the extra allowances made by the late Postmaster General to Messrs. Stockton & Stokes were extravagantly large, for no better reason, probably, than that they were generally thought so, and that the amount of them was very great. But the careful, and I may say painful, examination of the claims—painful on account of the responsibility of the task, as well as the general prejudice attached to the subject—has thoroughly convinced me of the danger and injustice of suddenly adopting opinions because they are common, without investigation. This injustice I had committed, and I feel it to be right, on this occasion, to make an atonement for it to the memory of the highly gifted and unfortunate man who made allowances which brought on him a weight of public censure that proba-

bly hastened his melancholy fate, and carried him down to a premature grave in a foreign land, by declaring in this public manner that, whatever other errors he may have committed, a full and laborious examination, under the solemn obligation of official duty, of the evidence vouching the claims of which Congress has made me the unwilling arbiter, has entirely satisfied me of their equity and justice.

V. MAXCY,
Solicitor of the Treasury.

Exhibit F, referred to in plaintiffs' petition, p. 10.

Exhibit F.

POST OFFICE DEPARTMENT,
December 27, 1836.

To the President of the United States:

SIR: I have read the letters of Lucius W. Stockton, esq., in behalf of himself and others, informing you of the award of the Solicitor of the Treasury in their favor, and making the following allegation and complaint, viz:

"The Postmaster General, however, withholds from our credit and pay a large part of this award, the non-payment of which is exceedingly oppressive to us; and we now conceive ourselves bound in duty to ourselves and our creditors to state the fact to the President, well knowing his determination to see, in all cases, that the laws are carried into effect."

The suspension made by me in the account of these gentlemen, which produced this application to Congress for relief, amounted to the sum of $122,101 46.

The Solicitor of the Treasury has awarded them, under the act for their relief, the sum of $162,727 05.

I have directed them to be paid under that award, and in obedience to the law, the sum of $122,101 46, being the entire amount suspended and referred to Congress. (Rec. No. xxxvii—5.)

The remainder of the award, of $40,625 59, is made up of claims which may be divided into three classes, viz:

1st. An extension of certain allowances from the 1st of April to the 31st December, 1835, for alleged extra services -	$26,862 00
2d. Interest - - - - - -	6,894 93
3d. The allowance of certain claims for extra services, most, if not all, of which had been presented to my predecessor, and rejected by him - - -	6,868 66
In all, the sum of -	40,625 59

In my opinion, the act of July 2d, 1836, authorized the solicitor to examine and decide upon the claims which had been suspended

by me, *and no other*. Such was my impression when the act passed, and such is believed to have been the intention of those who passed it.

In obedience to the mandate of the law, I have passed those gentlemen $122,101 46, although I have yet to be convinced that they had the least claim, in law or equity, to one-sixth part of that sum. When the law requires it of me, I shall, with equal promptitude, pay the remaining $40,625 59, although satisfied that not one cent is justly due.

I beg leave respectfully to suggest, that inasmuch as Congress is now in session, the most appropriate resort for the parties complaining is to that body for an explanatory act, which, if it confirm the opinion of the solicitor, I shall implicitly obey.

With highest respect,
Your obedient servant,
AMOS KENDALL.

P. S. Since the award was received and in part executed, a letter has been received from the solicitor reversing his decision on sundry items amounting to $1,163 16, and reducing the amount awarded by that sum. Mr. Stockton's letter is herewith returned.

WASHINGTON CITY, *December*, 1836.

SIR: On the receipt of your letter of the 26th inst., I lost no time in referring it to the Postmaster General for his report. Having received the report, I hasten to forward it to you forthwith.

It appearing that there is a difference of opinion between the solicitor and the Postmaster General upon the extent of the reference under the law to the solicitor, the Postmaster General having yielded to what he believes to be *all* that was submitted by the law to the solicitor's decision, and paid the same; but Congress being now in session, and the best expounder of the intent and meaning of their own law, I think it right and proper, under existing circumstances, to refer it to that body for their decision. I deem this course proper, as the difference in opinion about the extent of the submission under the law arises between the head of the Post Office Department and the Solicitor of the Treasury, and as, it appears, the solicitor has reversed in part his decision and award.

Yours, respectfully,
ANDREW JACKSON.

Mr. LUCIUS W. STOCKTON,
Acting for himself and others.

To the honorable the Senate and House of Representatives of the United States:

The memorial of William B. Stokes, Richard C. Stockton, of Maryland, and Lucius W. Stockton and Daniel Moore, of Pennsylvania, respectfully sheweth:

That they applied to Congress, at its last session, requesting such proceedings as its wisdom and justice might direct, with regard to

certain claims for services performed by your memorialists, under and by virtue of contracts with the late Postmaster General, William T. Barry.

That Congress, by an act dated 2d July, 1836, authorized and directed the Solicitor of the Treasury to settle and adjust the claims of your memorialists on principles of equity; and "directed the Postmaster General to credit them with whatever sum or sums of money the said solicitor should so decide to be due them for, or on account of, any such service or contract."

Your memorialists beg leave to state, that the Solicitor of the Treasury, in obedience to the act, *has* settled and adjusted their claims, and, in compliance with its provisions, made his report to Congress.

And the Postmaster General has carried to the credit of your memorialists the sum of $120,938 30 of the award of the solicitor; upwards of $80,000 of which was immediately appropriated by the Post Office Department to the payment of its own acceptances, made long ago on the drafts of your memorialists for, and on account of, their then current pay.

Your memorialists wish chiefly, however, to state, that the Postmaster General has withheld altogether from their credit or pay part of the award of the said solicitor, amounting to the sum of $40,625 59, notwithstanding the positive injunction of the act.

Your memorialists, therefore, pray that Congress will provide for them such remedy for this denial of their rights, as in their wisdom may seem right and proper.

(Signed) LUCIUS W. STOCKTON,
For himself and petitioners.

WASHINGTON CITY, *January 2d*, 1837.

Exhibit H.

Exhibit H, referred to in plaintiffs' petition, p. 10.

POST OFFICE DEPARTMENT, *Jan. 31st*, 1837.

To the President of the United States:

SIR: The undersigned perceives, by the published proceedings of Congress, that Messrs. Stockton & Stokes, mail contractors, have petitioned for the payment of certain sums of money alleged to be due them from this Department; and having in his possession facts and circumstances which, in his opinion, conclusively show that their petition ought not to be granted, he deems it his duty to report them to you, that you may, if you think proper, communicate them to the legislative authority.

In January and February, 1835, the committee appointed by the two houses of Congress to investigate the affairs of the Post Office Department made their final reports, in which many of its transactions were severely condemned.

Among the matters which received the condemnation both of the majority and minority of the committees, so far as any opinions were expressed by them, were certain allowances to Messrs. Stockton & Stokes, in addition to the compensation stipulated for in their contracts.

On the 1st of May, 1835, the undersigned took charge of the Post Office Department. He became immediately apprized that, within the preceding months of February, March, and April, additional allowances to Messrs. Stockton & Stokes, never known to any of the committees, had been made or entered to their credit, amounting to $122,101 46.

Finding the financial condition of the department much embarrassed, and that many small contractors had been paid nothing for several quarters, he determined, without looking into the merits of these new allowances, and as a means of relieving the finances from a heavy present charge, to suspend them from the credit of the contractors, which was accordingly done.

In a respectful memorial, the contractors represented that they had already received the money for these allowances, and that the suspension, by depriving them of all current pay, would speedily lead to their ruin, and compel them to abandon the transportation of the mails.

In obtaining a statement of their account made out to April 1st, 1835, it was accordingly found, that they had been overpaid enough to absorb the whole $122,101 46 recently entered, and over $8,000 more. It was also found that they had obtained acceptances from the department, in anticipation of future receipts, to an amount exceeding $70,000, which had been negotiated in sundry banks.

In this [state] of affairs, the undersigned felt it to be his duty to enter into the merits of their new allowances, and decide whether they should be restored to the credit of the contractors. After investigation, he came to the conclusion, that the principal items of them were not authorized by law; in which decision he was sustained by a subsequent opinion of the Attorney General.

At the last session of Congress, the contractors applied by petition for relief. A bill was introduced and passed into a law authorizing an equitable settlement of their accounts by the Solicitor of the Treasury. It was believed by the undersigned, and he supposed by every one else, that this act gave the solicitor authority to examine and adjust, upon equitable principles, those items only which had been allowed by his predecessor and suspended by him, and not to consider and allow claims which had been presented and rejected under the former administration, or such as had never been heard of by the Postmaster General or by Congress.

The Solicitor of the Treasury, however, construed the law as giving him absolute and uncontrolled power over all claims which might be presented, growing out of contracts referred to in the acts, and actually awarded the contractors $39,472 47 beyond the full amount of the suspensions.

It was thus virtually decided, that the allowances which had been so unanimously censured by the committees, were equitable and just; that the additional allowance of $122,101 46, never known to the committees, were of like character; and that it was equitable and just to make to them original allowances of $39,472 47 beyond the utmost liberality of the former Postmaster General.

The undersigned differed widely from the solicitor in reference to the equity and justice of these claims in general. He was as fully satisfied as the human mind can be, that the contractors were not entitled to $20,000 of the $161,000 awarded. But Congress had taken from [him] all power over the subject, as far as they gave jurisdiction to the solicitor, by peremptorily requiring him to pay whatever that officer might award within that limit. As far, therefore, as the jurisdiction of the solicitor extended, the undersigned could not refuse to pay without a direct and palpable disregard of the requirements of the law. But it was considered by him equally his duty to refuse to pay any sums which the solicitor, through an erroneous view of his legal authority, might think proper to allow, until such payment should be required or authorized by further legislation.

Believing that the solicitor had no jurisdiction to consider and allow any claims beyond those which had been suspended before the act of Congress passed, he refused to pay the $39,472 47 allowed by him over and above those claims.

The reasons on which his construction of the law are based, will be more fully given hereafter. The contractors memorialized the Senate with a view of obtaining payment of this new allowance, and their memorial was referred to the Committee on the Judiciary, who have considered the case, and made report to the Senate.

The undersigned felt no responsibility to the country in paying the $122,101 46 awarded under the act of the last session, because it was required of him by other public agents, to whom had been delegated the power to control and direct them in such matters. Nor did he think, at the last session of Congress, that he was called on to volunteer information, as to the nature of the claims, because the proposition was merely to submit them to the arbitrament of an equitable tribunal, which it was presumed would make full inquiry into their character and merits. But his attitude is now changed. He thinks that the solicitor, from an erroneous view of the facts and the law, has awarded the contractors $40,635 93 beyond the whole amount he had authority to consider, no part of which is due them in law or equity.

It cannot be paid without further legislation. He verily believes, and he thinks he has in his hands the means of showing, that any act of Congress, enabling contractors to obtain payment of this additional allowance, would be the consummation of a great public wrong; and he feels himself called upon, by the position he occu-

pies, to give this information for the use of the legislative authority. Having done so, he will have relieved himself from all responsibility; and if Congress then thinks proper to require the payment of these new allowances, it will be his duty to make it.

Having no charges to make against any one, and desiring only to give information, having reference to the future action of Congress, the undersigned regrets the necessity of alluding to any past transactions which cannot be recalled, or of speaking of them in a manner which may be so construed as in any degree censorious. But he finds it impossible to explain the merits of the claims now in question, and their present attitude, without giving a general history of the contracts and transactions out of which they have grown; and no private consideration will deter him from the performance of this public duty.

The claims now under consideration arose upon the mail routes from Baltimore and Washington City to Wheeling, and from Washington City to Baltimore and Philadelphia, during the years 1833, '34, '35.

In the summer of 1831, these routes were advertised for contract during the succeeding four years.

The advertisement on the Wheeling route was for one daily mail to run through from Baltimore to Wheeling in three days [and] four hours—returning in three days one and a half hours—with a daily mail from Washington City to connect at Frederick, Maryland.

The claimants in this case, or their representatives, put in a proposal embracing many routes, and among them the routes from Baltimore and Washington to Wheeling, on which they offered to carry the mails daily, as advertised, for $4,550 per annum. Upon this proposal the contract was assigned to them. At the same time they put in another offer, the substance of which, so far as regards these routes, was to carry a daily mail both ways in two and a half days; and another mail, three times a week, whenever directed by the Postmaster General, for the additional compensation of $8,950, which was accepted, and incorporated in the contract.

They subsequently offered to carry the mails through from Baltimore and Washington to Wheeling in two days in summer, and two and a half days in winter, for the additional compensation of $6,750 per annum; which offer was accepted.

It appears by the books and files of the department, that from the 1st of January, 1832, to about the first of May of that year, none of the improved service was performed, the mail being carried through in a daily line, occupying about three days in the passage, as under the old contracts.

Letters on file, from the contractors, dated 20th and 3d April, 1832, shew that they were then preparing for the increased speed. These letters inform the department that contractors were about to make daily the tri-weekly accommodation line of stages run by them; and asks, as a matter of favor, that they may be permitted

to carry the way mails upon it, to prevent the detention of their swift line by stopping for the opening of the mails at so many small post offices. By a letter dated 24th April, 1832, this privilege was granted, upon condition that the second line should continue to run daily.

Soon after the contract was formed, the mail appears to have been carried from Baltimore to Frederick on the railroad; and from the 1st February, 1832, the sum of $2,046 per annum was added to the contractors' compensation therefor. On the 1st September, 1832, the second daily line was cut down to an every other day line from Hagerstown to Wheeling, having run daily about four months.

The first schedule for the swift line was issued on the 18th April, 1832, and was carried into effect about the 1st May. In September, of that year, the contractors produced proofs that, in consequence of the Cumberland road being broken up for repairs, it was scarcely passable, and not at all safe to run at the speed of two days. In consequence they were, on the 3d October, allowed two and a half days each way; and on the 22d December they were allowed two days nineteen hours going, and two days twenty hours returning.

In their account for the first quarter of 1833, contractors charged $6,400 for running a second daily mail during the year 1832, which, upon a statement of the superintendent of mail contracts that such a mail had been run from the 1st January, 1832, was allowed.

In the same account the contractors charged $9,812 for forty extra horses and twenty-two postillions, alleged to have been necessarily employed by them, in consequence of the increased weight of the mails, to enable them to ascend the mountains with the requisite speed; which charge, upon a like certificate that they had been employed from the 1st January, 1832, was also allowed.

These allowances thenceforward became a part of the contractors' annual compensation, which was considered to be as follows, viz:

Original annual pay, as accepted	$4,550 00
First improvement of speed, and tri-weekly mail	8,950 00
Railroad service	2,046 00
Second improvement of speed	6,750 00
Second daily mail	6,400 00
Extra horses and postillions	9,812 00
	$38,508 00

On the 27th March, 1833, the contractors, in a letter to the department, represented that the weight of the mails had enormously increased, and that it was impossible to convey them by the means provided. For an advancement of twenty-five per cent. on their whole improved compensation, they offered to put such additional stock and vehicles on the road as should be adequate to this object.

The second daily mail was not then running, although they were under pay for it. As the most obvious mode of providing for the transportation of the increased mail matter, the department, by letter dated 28th March, 1833, ordered them to run a second line of four-horse post coaches, reserving the question of compensation; but, as it appeared they were already under pay for such a line, nothing could be added to their compensation on that account.

On the 3d June, 1833, they applied again to the department for an extra allowance of fifty per cent. on their contract pay, on the ground that they had been obliged to make great extra provision for conveying the increased weight of mails.

There is evidence that the Postmaster General was inclined to authorize this allowance, and made an entry to that effect on a paper not placed on the files, and sent to the files another paper, on which he directed the application to be suspended; and that it remained suspended for further consideration until February, 1835.

On the 23d April, 1833, the contractors were directed to run through in two days and six hours each way, being allowed six hours more than their contract time. In this condition were the contractors' service and pay at the time of the retrenchments ordered in November, 1833.

The orders of retrenchment, upon this portion of their service, were as follows, as contained in letters addressed to the contractors, viz:

BALTIMORE, MD., *Nov.* 19, 1833.

To STOCKTON & NEIL.

(Nos. 1,201, 1,372, 1,389, 1,502, 1,504.)

GENTLEMEN: Order of department requiring increased expedition, so as to run from Baltimore, Washington, through Wheeling, to Cincinnati and Maysville, in four days in summer, and five and a half days in winter, and "for other improvements expressed in contractors' letter of December 23d, 1831, rescinded from 1st December, 1833, with the exception of the three additional trips on the National road, which are to be retained as an offset against certain reductions covered by their proposals. Compensation, $5,950, to cease, and one month's extra pay allowed.

"S. R. HOBBIE.

November 19*th*, 1833.

Messrs. STOCKTON & STOKES,
Baltimore, Maryland.

(No. 1,201, 1,389.)

Baltimore to Wheeling. Order allowing $9,812 a year for postillions and extra horses, rescinded from 1st December, 1833, as increased speed will be dispensed with. Compensation, therefore, to cease, and one month's extra pay allowed.

"S. R. HOBBIE."

These orders left the pay of contractors, from 1st January, 1834, as follows, viz:

Original annual pay as accepted	$4,550 00
First improvement of speed, and tri-weekly mail	8,950 00
Railroad service	2,046 00
Second daily mail	6,400 00
	$21,946 00

The retrenchment had scarcely taken effect, when the department was pressed to restore to contractors the heaviest items retrenched, and to make still further allowances. By letter dated 15th December, 1833, the contractors urged the restoration of the allowance for extra horses and postillions, on the ground that, although the additional speed upon which it was originally based had been dispensed with, this additional force was still necessary to get along with the increased weight of the mails; and they again asked for the fifty per cent. allowance which had been applied for in June of that year. The result of the written and personal application made at that time is shown in a letter from the department to contractors dated 28th January, 1834, in which they were informed that, if they continued to employ the extra horses and postillions, the department would pay for them when it was in a condition to do so; but that no payment should be made under that order without a further order from the northern division. This letter did not meet the views of the contractors; and not being assented to by them, was always treated as null and void.

A private letter, of subsequent date, from the Postmaster General to one of the contractors, has been exhibited, in which an assurance was given that something should be done to meet his expectations, showing that nothing of that sort had been done.

On the 23d April, 1834, the schedule for summer service was issued to contractors, allowing them two and a half days going out, and two days fifteen hours returning; the former being the exact time fixed in the first improvement, and the latter three hours more.

On the 22d November, 1834, they were allowed two days twenty-three hours going out, and three days returning, being eleven and twelve hours more than contract time after retrenchment.

The service and pay were in this condition when the committees of Congress made their investigation. The committee of the Senate condemned the proceedings and allowances in this case in general terms, and the minority of that committee expressed an opinion upon them. The committee of the House commented on and censured them, and others connected with them, in the following terms, viz:

"The committee have not examined this contract with a view to form an opinion of the justice of the extra allowance in each par-

ticular instance. It might be quite impracticable, from the contract and the endorsements upon it, to discover, precisely, the additional services for which each separate extra allowance was made. It is a fit case for general comment, and one in which particular detail may well be dispensed with. Either there was very great inattention in adapting the advertisements to the proper service, or these extra allowances had been made most improvidently. The service in the advertisement was secured, in the autumn of 1831, at $37,000; yet it is rapidly run up to more than $100,000. Certainly it is not an ordinary case, and some extraordinary reason should exist for this sudden and enormous increase.

"Additional lines of stages were ordered and paid for; postillions and extra horses, tolls and ferriages, were all paid for; but upon what ground of reason, propriety, or justice, some of these allowances were made, the committee do not perceive.

"Many of these services, however, have been retrenched—amounting, in the aggregate, to $35,000. This receives the hearty approval of the committee. They believe that it was a contract which demanded at least that reduction; and they think the public interest would not suffer by an increase of that amount.

"It is a contract for twenty-two routes, at a gross sum. It contains provision for two separate classes of additional improvements, both of which were ordered; add to which, that extra has been allowed upon extra until the original sum is but little more than one-third of the total amount of the expenditure."

The minority of that committee commented on these allowances, pages 111 to 115 of their report, in more severe terms; coming to the conclusion that, upon the basis presented, the contractors would receive, in four years, $78,040 more than they rendered service for, or were entitled to, according to law.

Neither the majorities nor [the] minorities of either of the committees had any knowledge of those allowances embraced in the solicitor's award, which adds no less than $161,573 93 to those on which their comments and conclusions were based.

When the undersigned entered upon the duties of Postmaster General, he found the following order entered upon record, viz:

MARCH 31st, 1835.

"It appears there was an order drawn early in May, (June,) 1833, allowing 50 per cent. on pay from Baltimore to Wheeling, on account of the increase of the weight of mails, impediments in National road, &c. It was held under suspense for further consideration, and, in February, 1835, confirmed by direction to financial branch to place it to the credit of contractors, down to the time of retrenchment, January 1st, 1834. Now, order is given by the Postmaster General to continue the allowance of 50 per cent. from that date."

This order did not restore any of the retrenchments, but consummated a new allowance. It was the evident fulfilment of the as-

surance given to the contractors, in the private letter of the Postmaster General, in the winter of 1834. On reference to the account books, however, it was found that both the retrenched allowances had been entered upon the 1st January, 1834, to 31st March, 1835, inclusive. Upon enquiry, the undersigned was assured that those entries were erroneous; that they had been made in consequence of the construction which the contractors put upon the recent order, maintaining that, in effect, it restored the retrenched allowance, that the Postmaster General had been subsequently referred to for an explanation; that he had declared, both to his second assistant and principal pay clerk, that it was not his intention to renew the retrenched allowances, but that the book keepers had neglected to correct the error. In this manner, those items came to be a part of the suspension ordered by the undersigned, upon his accession to the department.

The retrenched allowances ordered and suspended were - - - - - -	$20,702 50
The 50 per cent. allowance do do -	62,575 50
Whole amount suspended - - -	83,278 00
To these, the solicitor has added an extension of the retrenched allowances to 31st January, 1835 -	12,421 50
And a like extension of the 50 per cent. - -	14,440 50
Making the whole amount allowed by him on these routes - - - - - -	$110,862 00

Still waiving the question of law, the undersigned will briefly advert to the grounds in which these allowances are made and extended. To justify a restoration of the retrenched allowances in law, it would seem that they must have been again ordered. To justify it in equity, they must at least have been performed.

In fact, they were neither ordered nor performed. That they were not ordered, is proved by the record, both negatively and affirmatively; *negatively*, in the absence of any order rescinding or countermanding the order of retrenchment; *affirmatively*, in the letters of the department, directing the contractors to run through in two and a half days, and back in two days fifteen hours, during the summer of 1834 and 1835, and allowing them about three days in winter.

The undersigned has heard it said, that his predecessor, in the winter of 1833–'4, promised to restore these allowances, and said he had done so.

What he then *did*, is shown by the letter of the 28th January, 1834, which was not accepted by contractors.

What he did not do, is shown by the absence of any order to that effect, and his declaration, when he came to act finally, that he had no intention to restore them.

It is alleged, as a reason for extending these allowances, that the undersigned did not countermand them. What could be countermanded? He could not countermand any order restoring them, for none such existed. He could not countermand the performance of the services, for [the] contractors were not performing them, nor pretending to perform them. They could not perform them without disregarding the arrangements and orders of the department. A suggestion that they were performing any extra service, with a view to future compensation, would have been met by an instant declaration, that no such practice could be tolerated, and no such thought must be entertained. But it is only after the contract has closed, and an equitable settlement of accounts is in progress, the department learns, for the first time, that certain extra services have been performed, without its knowledge, contrary to its orders, and in opposition to the known wish and will of its responsible head, which create an equitable claim upon it for $26,862.

To the undersigned, the principle is alarming. It is, that the declaration of the head of a department, now in his grave, as to what he would do or had done, are to be taken as a solemn contract, in contradiction, not only of his own subsequent declarations, but of the record itself, and he made the basis of drawing from the Treasury untold thousands.

The establishment of such a principle would open a new approach to the Treasury, as broad as the most enterprising depredator upon the public could devise or desire. On this point, the undersigned has only to add the declaration, that after he took charge of the Post Office Department, the additional speed which formed the basis for them was never ordered or performed, and that any allowance therefor would be wholly without consideration.

To the undersigned the 50 per cent. allowance appears to have been equally without consideration from beginning to end. It is made to sweep back from the spring of 1835 to the 1st January, 1832, and brought down to the 31st December, 1835, amounting to $77,016. It appears to have been granted to pay for the conveyance of an increased weight of mails. That the mails greatly increased on these routes there is no doubt; but their weight, as stated, if intended as an average, is much exaggerated. There is abundant proof that, on an average, they never were a load for one four-horse post coach daily, with the exception of a very small weight of way-mails carried in the slow line. The whole mails, with many passengers besides, were carried in the swift line during the whole four years. By their own showing, the contractors, at first, carried nine passengers in that line; and one ground of complaint, in March, 1833, was, that in consequence of the increase of the weight of the mails, they had been obliged to reduce the number of passengers to six. All the statements that the weight of the mails were so enormous that one coach could not carry them, are to be understood as meaning, that one coach could not carry them in addition to an ordinary load of passengers.

The first allowance alleged to have been made necessary by the increased weight of the mails connected with the two days' speed was $9,812 for extra horses and postillions, to enable contractors to haul their heavy load of mails and passengers up the mountains with sufficient celerity.

When, in March, 1833, they complained that they had been obliged to reduce their passengers from nine to six, in consequence of the increase of mail matter, they were allowed another full daily line at an annual charge of $6,400; which, ordinarily, carried but a few pounds of mail, and was almost wholly devoted to passengers.

The first and second daily lines, with the extra horses and postillions, constituted the whole means furnished by contractors for the conveyance of the original mail and the increased mail. These, as has been seen, were all paid for by specific and liberal allowances, leaving one whole coach, and at least half the other, for the conveyance of passengers. What, then, have contractors furnished to entitle them to this allowance of $77,016? Were there other lines of stages, other extra horses and postillions, or other increased speed not yet heard of, to require or justify this allowance? If there was not a single stage, not a single horse, not a single postillion, not otherwise liberally paid for, employed in the service of the department—and if every moment's speed, and increased speed, was otherwise liberally paid for, what consideration has the department received for this 50 per cent. allowance?

The undersigned believes that, by ordering the second daily line in March, 1833, the department made ample provision for the transportation of the increased mail matter; and he has yet to learn that any other was ever made by contractors. This second mail never was retrenched until the end of the contract. It was only the increase of expedition and its incidents that were pruned off, leaving two daily four-horse post coach lines to transport the mail at an ordinary speed. Indeed, it was reported to the undersigned, after his accession to the department, that the second line was of very little importance as a mail line, and he had no doubt it might be discontinued as such without any public detriment, its continuance being justified only as a means of making amends to the contractors for the usual and, when they contracted, unexpected amount of mail matter thrown upon their swift line. From these considerations the undersigned believes the whole 50 per cent. allowance as destitute of an equitable, as it was decided to be of a legal, basis; and that no step ought to be taken by Congress to produce the payment of that portion now withheld, amounting to $14,440 50.

The rest of the suspended allowances were made upon the routes from Washington, through Baltimore, to Philadelphia.

The advertisement of 1831 invited proposals for one daily mail between Washington and Baltimore, to run through in five hours, and supply the way offices.

Proposals were also invited for one daily mail from Baltimore to Philadelphia, to run through, one way, in 23 hours, and the other in 22, and supply the way offices.

These, and several other routes, were assigned to R. C. Stockton, for Stockton & Stokes, at a combined bid of $14,500, as advertised. At the same time Mr. Stockton offered, for the additional sum of $20,150, to make a variety of improvements, among which were the following, viz:

"On route No. 1,371, Philadelphia to Baltimore; No. 1,372, Baltimore to Washington. I will leave Washington, during steamboat navigation, with the great mail, after its arrival from the south, say at 12 o'clock, midnight, arrive at Baltimore by 6 A. M.; leave Baltimore at 6½ A. M., and arrive at Philadelphia 6½ P. M., same evening; returning with equal expedition, or as required; or say, leave Philadelphia at 6 A. M., (New York mail having arrived,) and reach Baltimore by 6 P. M., and Washington by 12, same night, &c.

"Or, I will carry the mail throughout the season from Washington to Baltimore, and thence to Philadelphia, to reach Baltimore in 4¾ hours, and reach Philadelphia by 6½ *P.* M. the next morning, after its departure from Washington; departing from the latter place as at present, (or at pleasure of the department,) and return with like expedition over the whole (both) routes, or as requested; giving under this arrangement a second daily mail to the cities of Philadelphia and Baltimore. I will also give, on route No. 1,372, from Baltimore to Washington, two additional daily mails, to be run as the department may direct," &c.

"And on such (or all) of the above routes, as may be required, I will furnish guards and express mails whenever and wherever required."

This proposal was accepted, and, in substance, incorporated into the contract; twenty-three hours being fixed for the last improvement offered between Washington and Philadelphia.

Some diversity of opinion has arisen in relation to the amount of service on the routes in question, stipulated for in this contract; but to the undersigned the difficulty seems to have arisen from considering it in connexion with another contract, for steamboat service, between Baltimore and Philadelphia.

The contract of Stockton and Stokes was, of itself, obviously a provision for the *whole mail service between the two cities*, and should be considered in that light. The service intended seems clearly to have been as follows, viz:

1st. One daily mail from Washington to Baltimore, and from Baltimore to Philadelphia, as advertised.

2d. A second daily mail from Washington to Baltimore in six hours, and from Baltimore to Philadelphia in twelve hours, to be run *during "steamboat navigation."* Or, if the department preferred it, a second daily mail from Washington to Philadelphia in

twenty-three hours, to be run "*throughout the season*," giving a second daily mail to Philadelphia and Baltimore.

The first alternative evidently contemplated a steamboat mail from Baltimore to Philadelphia, as it required six hours between Washington and Baltimore, 38 miles, and only 12 hours between Baltimore and Philadelphia, 98 miles. The second evidently contemplated a rapid land line all the way, and throughout the year, requiring only $4\frac{3}{4}$ hours between Washington and Baltimore, and about 18 hours between Baltimore and Philadelphia. If the department took the first alternative, it would have a second daily mail from Washington to Philadelphia by steamboats, in part, run through in 18 hours *during steamboat navigation* only; if it took the latter, it would have a second daily mail, in stages, run through in 23 hours throughout the year.

This exhibits a harmonious and rational plan for the whole mail service on that line, such an one as might be expected from an experienced and able contractor, who thoroughly understood the subject, and wished to keep the whole service in his own hands. The service performed on these routes, under this contract, was, as nearly as the undersigned can ascertain, as follows, viz:

From the 1st January, 1832, to the opening of steamboat navigation in the spring, the contractors ran one daily line only from Baltimore to Philadelphia; and a large portion of the mail matter was sent by another line, called "*the express line*," which was run by them, in part, through York and Lancaster, Pa., at a cost of $6,300 per annum to the department, $3,150 of which was paid to Stockton & Stokes.

Upon the opening of navigation in 1832, their daily line was cut down to three times a week from Baltimore to Elkton, running daily from Elkton to Philadelphia, the department having contracted with the steamboat company to carry the mails twice a day between Baltimore and Philadelphia, at an annual charge of $7,000.

Upon the closing of navigation in the winter of 1832–'3, the contractors run one daily line *only*, and a large portion of the mail was sent by way of York and Lancaster, as in the preceding winter.

In the spring of 1833, an inquiry was set on foot to ascertain whether the mail could not be expedited along the Atlantic line, and a connexion affected, which should be more satisfactory to the public. A plan was digested, and the contractors between Washington, Baltimore, and Philadelphia, undertook to run through in 20 hours. Accordingly, on the 27th November, 1833, the department furnished them a schedule for their fast line, allowing 20 hours to run through, having, on the 4th day of that month, furnished them with a schedule for their slow line, allowing 27 hours; but the books of the department show that, as late as the 31st December, neither of these lines was running, the navigation being still open.

Thus, after having performed the service in the summer of 1833, in the same manner as in that of 1832, they commenced running two lines for the first time, as provided in their contract, on the suspension of steamboat navigation in January, 1834. The only thing done by them, which they had not contracted to perform, was running through in 20 hours instead of 23, thus furnishing an increase of speed equal to 3 hours, between Washington and Philadelphia.

These two lines had ceased to run, as the books show, prior to the 10th of March, 1834, having run but about 60 days. Steamboat navigation having commenced, the contractors fell back to their tri-weekly service between Baltimore and Elkton, and daily between Elkton and Philadelphia.

In the winter of 1834–'5, the swift line commenced running between the 17th and 23d December, and could not have run more than 90 days. Upon the re-commencement of steamboat navigation, contractors fell back to the service of the preceding summer. Their contract ended on the 31st December, 1835; and it was but a few days in that month that they run even one daily line.

Nothing could seem to be more plain than that, for three years and seven months of this contract, the contractors had never performed more than half, and three-fourths of the time less than half, the service they had contracted to render and were actually paid for. For about five months on the routes from Washington to Philadelphia, they exceeded their contract service by increasing the speed 3 hours, which was but small equivalent for the service which had been dispensed with. Yet, in the fall of 1834, they set up a claim to extra compensation for running the swift line during the preceding winter, charging $16,200 for 90 days' service, being about 30 more than it appears to have lasted; and, in the spring of 1835, they claimed $18,000 for the like service, 100 days, during the preceding winter, which appears to be some 10 days more than it lasted. The ground on which these claims were set up was, that this was an additional mail, not required by their contracts, and undertaken by them under a special arrangement.

To sustain this position, they employed counsel to argue that the words "*during steamboat navigation*," and "*throughout the season*," in their proposals, meant the same thing, and that they were bound to run "*three daily mails during steamboat navigation*, and when steamboat navigation was suspended, *only one;* thus throwing one of the winter lines provided for in the contract into the summer, and making room for an extra line in winter.

On the first sum charged, $4,460, and of the second, $4,955½, in all $9,415½, belonged to that part of the route which lies between Washington and Baltimore. On that route contractors were under contract and pay, to run the following mails, viz:

1. A daily mail in 5 hours, as advertised.

2. A daily mail from Washington, through Baltimore, to Philadelphia, "during steamboat navigation," in one word, "or throughout the season," in another, at the option of the Department.

3 and 4. Two additional daily mails provided for in a separate clause of the improved bid.

5. An additional daily mail until 31st December, 1834, provided for in an accepted offer for improvements upon the route from Washington to Winchester, Va., Leesburgh, Va.

Of these five daily mails, contracted and paid for, not more than *three* were ever run, and often but two.

When the swift line went into operation on this road, the ordinary line for the great mail ceased to run, so that there were still but two, or, at most, three daily mails in operation. Yet the contractors maintained that this mere arrangement for increased speed, although it superseded a mail they were still paid for, was a contract of an *additional* mail, and ought to be paid for as such, making a sixth daily mail, while it ran, so far as pay was concerned, between the two cities. These claims being at the rate of $65,700 per year, were strenuously resisted by the assistant Postmaster General, under whose superintendence the arrangement for improving the speed had been put in operation, on the ground that contractors had done nothing more than they were bound by their contract to do, and were paid for doing, except an increase of 3 hours in speed, for which only they ought to be paid.

However, in April, 1835, the first claim of $16,200, and a like sum for the winter of 1834–'5, was allowed, making the sum of $32,400 which was entered to contractors' credit, and constituted a part of the suspensions ordered by the undersigned.

It would seem that, in an equitable adjustment of these claims, the services paid for, and not performed, should be taken into the account.

If the construction of the contract, herein suggested, be correct, the contractors should be charged with the value of one daily mail from Baltimore to Philadelphia during the four years, and for more than nine months with the four weekly trips from Baltimore to Elkton, neither of which was performed, though paid for, and also with three daily mails, at least, paid for, but not carried between Washington and Baltimore, which would clearly balance the alleged extra service. But, if the construction of the contract, adopted by the contractors' counsel, be correct, and they were bound to run between Baltimore and Philadelphia three daily lines in summer, and only one in winter, they would, in equity, be left in much the same condition.

In that event, they are justly chargeable with two and a quarter lines, they were paid for running in summer, but did not run; as also with the two or three mails they were paid for running on the road from Washington to Baltimore, but did not run; and this would probably balance their claim for extra service, so that it would seem

to be perfectly immaterial, in a court of equity, whether this service is construed to be extra service or not. But the solicitor seems to have entirely overlooked these just claims of the public, and instead of deducting any thing for the very great services paid for, but not performed, he added, in his equitable settlement, $1,800 to to the allowances made by the former Postmaster General.

Thus was it decided to be equitable and just to pay contractors an extravagant price for this alleged extra service, when, according to their own construction of their contract, not half the regular service paid for had ever been performed, without giving the department credit for the failure.

And, what is more remarkable, it was decided that this was an *additional* line on the Washington road, when in fact another line had been withdrawn to make way for it; and that it was equitable and just to pay for the line that was withdrawn, as well as that which took its place—making, on the pay list, six daily mails between Washington and Baltimore, when only *three* or three were run.

But even six daily mails appear not to have been sufficient on this road. An account for special services was made out and presented by the contractors, in which, among other things, they charged "for running second coach, with double mails, from Baltimore to Washington, when the mails were too heavy for one coach," during the years 1832,–'3,–'4, and the first quarter of 1835, 455 trips, at 20 dollars per trip, amounting to $9,100—being more, per annum, than their contract pay for a full line.

These claims had been presented to the late Postmaster General, who allowed such as bore date prior to the 31st March, 1833, $4,020, and declined allowing the rest. But, in the recent equitable settlement of the contractors' accounts, they have *all* been allowed.

Thus it has been decided to be equitable and just to allow for extra coaches, to carry the mail, on a line where six daily lines of four-horse post coaches were already paid for a part of an year, and for the balance of the year five, though but two or three were run on a line where contractors were bound, by their contract, to furnish express mails whenever and wherever required, on a line where the entire great mail, with all its natural increase, has been carried for the last 18 months, and is now, *in one moderate sized wagon*.

The only remaining portion of the award not executed, is the allowance for interest on suspended pay.

Still, waiving the question of legal authority in the solicitor, the undersigned has to remark, that contractors were overpaid $8,000, on the first April, 1835, and had been overpaid in *quarter* or less sums during most, if not the entire period, of their contract*ors*, while multitudes of other contractors were without pay.

It would seem but even-handed justice, in an equitable settlement, that the department should have had the benefit of interest also, in all its overpayments. But none was allowed. In addition to this

oversight, the solicitor has allowed interest on one month before the moneys due could bear interest, even upon principles which regulate private transactions.

The clause in the contracts in relation to the times of the payment is as follows, viz:

The said Postmaster General covenants with said contractor to pay as aforesaid, for the carriage of the mail as aforesaid, at the rate aforementioned, quarterly, in the months of May, August, November, and February. From this, it is obvious that the Postmaster General *has the whole* of the months named to pay in, and that, until the end of those months, sums unpaid cannot bear interest either in law or equity. Yet the solicitor has calculated and allowed interest in each case, from the first day of the months in which the debts are alleged to have become due.

The whole amount allowed by him at interest, and remaining unpaid, is $6,893 93. Before the undersigned enters upon the consideration of the legal authority of the solicitor to consider and allow other claims than those suspended, he deems it necessary to advert to the proceedings between the department and that officer, while the case was pending. On first receiving the solicitor's award, in part, the undersigned expressed his surprise to him, by letter, at the construction he had given the law. After some discussion, the award was withdrawn with the view, as was supposed, that it might be reviewed and corrected. Some days afterwards, a letter was received from the solicitor, enclosing a very brief opinion of the Attorney General, declaring, in general terms, that he thought the solicitor had jurisdiction of other claims than those suspended. Being sure, from the tenor of the opinions, that the specific points in issue had not been stated to the Attorney General, the undersigned inquired of him, and learnt [that] neither the views of the department, nor even the fact that any difference of opinion had arisen between the solicitor and its head, had been communicated to him. On being asked whether his opinion was so clear, that a history of the act, and a specific statement of the points and principles involved, might not change it? he replied, that it was not the opinion given, having been formed upon a cursory examination of the act, without a case presented. As the opinion of the undersigned was formed and clear, he had no motive to trouble the Attorney General with a review of the case, and now alludes to the subject only to show how much importance is due to that opinion thus elicited.

The grounds upon which is based the opinion of the undersigned, that the solicitor has transcended his jurisdiction, are as follows, to wit:

1st. The act of Congress cannot be construed to be more than commensurate with the object of legislation. Certain allowances had been entered to the credit of contractors, and suspended therefrom. These suspensions were generally known and talked of

To be relieved from them was the object of the contractors' petition to Congress; to relieve them, as far as equity would admit, was the object of Congress in passing the law. No other or further claims had been heard of or imagined by the department, the public, or by Congress. The only object of legislation, therefore, was those suspensions.

2d. The language of the act is consistent with that object; it authorizes the Solicitor of the Treasury "to settle and adjust the claims of William B. Stokes and Richard C. Stockton, of Maryland, and Lucius W. Stockton and Daniel Moore, of Pennsylvania, for extra services performed by them as contractors for carrying the mail under and by virtue of certain contracts therefor, by them alleged to have been made and entered into with them by William T. Barry, late Postmaster General of the United States, and for that purpose to inquire into and determine the equity of *the* claims of them, or any of them, for or on account of any contract or additional contract with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make such allowances therefor as, upon a full examination of all the evidence, may seem right according to the rules of equity."

The definite expression, "*the claims*," can have reference only to something fixed and known; and the phrase, "*on which their pay may have been suspended*," points directly to the claims referred to. It could not be otherwise understood by Congress than as embracing *the* claims which had been suspended in the department, and formed the object, and the sole known object, of the contractors' complaint and petition.

3d. To construe the expression, "*the claims*," to mean *any* claims, is to pervert the meaning of words, and render the act of Congress a violation of all those rules of prudent caution which have regulated their legislation in reference to public accounts. In the general system for that purpose, they have carefully provided that the settlement of the most trifling claims shall undergo, or be liable to, a revision before they shall be paid. They are first examined by auditors, whose decisions, in all cases, are subject to revision by comptrollers, before they can approach the Treasury for payment. As the suspended claims in this case were supposed to have been once allowed, it was no violation of these safe principles to provide that they should be revised by another public officer, and, if found equitable and just by him, should be paid. But if the act is to be construed as authorizing the solicitor to credit and allow claims which never had been acted on, or heard of, by the former or present Postmaster General, it is in violation of the principles which have governed Congress in all their general legislation. It confers on one man, unchecked and uncontrolled, upon his sole opinion and decision, the power to drain the Treasury of untold thousands. It could not have been the intention of Congress to confer such a power.

4th. According to his own construction of the act, the solicitor had no legal authority to allow *special accounts*, nor any accounts not arising under "certain *contracts*" by them alleged to have been made and entered into with them by *William T. Barry, late Postmaster* General," nor any not arising under contracts so made, "on which their *pay may have been suspended by the present Postmaster General.*"

Two things are necessary to give him any jurisdiction whatsoever, viz:

1st. A contract by W. T. Barry, late Postmaster General.

2d. A suspension of pay, by the present Postmaster General, upon the contract.

Yet the solicitor has allowed claims which are entirely destitute of these essential requisites to give him jurisdiction. He has allowed $1,240 for one month's extra service, in the spring of 1831, between Baltimore and Philadelphia, under a contract made by the Hon. John McLean, in 1827, on which there is no pretence that contractors' pay has been suspended by the present Postmaster General.

He has allowed claims arising under an alleged contract, the pay on which, according to his construction, had been suspended, not by the present, but by the late Postmaster General. An order of the department always to bring on from Baltimore the entire steamboat mail for the south, is construed by him into a "standing contract," entitling them to pay for additional coaches employed in that service, although the parties were bound to run several additional lines, "as directed by the department," which they did not run, and to furnish "express mails whenever required without charge." The contractors presented an account to the late Postmaster General for extra coaches thus employed, which he allowed down to March 21st, 1833, when his second assistant took charge of the mail contracts in the northern division, and *declined allowing the balance.*

The pay on that "standing contract," therefore, was suspended by the *late* Postmaster General, and not by the *present;* and, in undertaking to consider any claims arising under it, the solicitor has transcended his jurisdiction, even under his own construction of the law.

But the letter now construed to be a "standing contract," was always considered in the department one of its usual orders to contractors, as to the manner of performing their contract service.

The mail was too heavy to be carried in one coach with an ordinary load of passengers. The whole mail, and all the passengers could not be brought in one coach, and some of the mail bags were left behind in the competition.

The department ordered them to bring the whole, and to get along with mail and passengers both, they divided them between two coaches. The charges made for the second coach were not, and were not pretended to be, made in accordance with any contract,

but were to all intents and purposes *special*, and for *special services*. As such, the solicitor had no jurisdiction over them under the act of Congress.

If, therefore, the order of the department be considered a contract, the solicitor had no jurisdiction over the claims presented, because the pay was not suspended by the present Postmaster General, but had been suspended by his predecessor.

If the order was not a contract, then the claims were *special*, and not arising under any contract made by W. T. Barry, late Postmaster General. The solicitor had no jurisdiction over them.

5th. The act of Congress conferred on the solicitor no legal authority to consider or allow any claim whatever for interest. The question has been settled, the undersigned believes, by repeated decisions from the foundation of the government, that authority to settle a claim on equitable principles, does not confer authority to allow interest on such claims, *unless it be specially granted*. He knows such has been the construction of some of the accounting officers; but in this case that question does not arise, for the solicitor has not allowed interest on the claims he has acted on, but upon "*current pay withheld*" with which he had nothing to do.

He had, in the opinion of the undersigned, no more authority to settle a claim for interest set up by these contractors in current pay, which they did not receive when due, than he had to allow interest to the hundreds of small contractors who had been in the same situation during several previous quarters, and some of them for years.

There is not a word in the act of Congress from which such powers can be extracted. But, if he had made the allowance upon sums suspended, it would, in the opinion of the undersigned, be equally without authority.

It was "*claims for extra services*" only, and not interest on those claims, which he had authority to adjust.

This point appears to be too plain to require elucidation.

6th. It is inconceivable that Congress intended to sanction the principle that contractors can raise a claim in law or equity, against one of the executive departments, by performing services without its knowledge, and contrary to its orders, in defiance of what they know to be the settled policy, the wish, and the will, of its responsible head.

This case, if the construction of the solicitor be correct, presents the singular and unprecedented spectacle of the head of a department struggling with *with* all his energies to extricate it from deep pecuniary embarrassments, while a portion of the contractors under his direction were secretly rendering, or assuming to render, extra services which they knew he supposed were countermanded, and would have instantly countermanded if such had not been his belief, with a view of bringing upon him, at a convenient time, claims for more than $26,000.

Such a principle takes from the head of a department his legislative control over its administration, and throws it into the hands of the contractors. He can never know the extent of his service, or the magnitude of his expenditures; the one being concealed from his knowledge, and the other taken from his control. It is impossible that Congress could have intended to set such a precedent, or sanction such a principle.

The concern of the undersigned on this point is the greater, because he has learnt that the other contractors have similar claims ready to be presented when the principle shall be established; and he seriously apprehends, that instead of applying the surplus income of the department to the extension of mail facilities and the perfection of the service, he shall be obliged, *if the principles and the perfection of the service he shall be obliged*, if the principles advanced in this case be established, to apply the greater portion of that surplus income for some time to come, to satisfy the equitable claims of a few large contractors whom the committee of Congress, two years ago, unanimously reported to have received already hundreds of thousands more than was due to them in law or equity.

The undersigned has thus attempted to make plain the facts and the law in this important case. He thinks he has conclusively shown that a large part of the contract service on the routes in question, though fully paid for, was never performed. He thinks he has also conclusively shown:

1st. That the 50 per cent. allowance, sanctioned and extended by the solicitor, was wholly without consideration, and not due in law or equity - -	$77,016 00
2d. That the allowance for increased speed and extra horses and postillions were never restored by the late Postmaster General, after the retrenchment of 1833; that the service in which they were based was never performed, and that they are without consideration - - - - -	32,124 00
3d. That the alleged extra mails from Washington to Philadelphia, in the winters of 1833–'4 and 1834–'5, were put on by their contract lines, expedited three hours; and that, if they were admitted to be extra service, they constitute no adequate equivalent for the large amount of regular service paid for, but confessedly not performed - - -	34,200 00
4th. That the claim for special services in the spring of 1831, between Baltimore and Philadelphia, is clearly beyond the jurisdiction of the solicitor -	1,240 00
5th. That the charges for extra coaches on the line from Washington to Baltimore, were charges for the performing a part of their regular services on a road	

where they were paid for running five or six daily mails, and actually only run two or three; being also bound to run express mails whenever required	9,100 00
6th. That the allowance for interest is without equity, and has no warrant in law - - -	6,893 93
Whole amount of solicitor's award - -	$161,573 93
Of which there has been paid, in obedience to law, the whole amount of suspensions, jurisdiction over which was conferred upon the solicitor by act of Congress - - - - - - -	122,101 46
Leaving unpaid the sum of - - -	39,472 47

This sum awarded, as the undersigned believes, from an erroneous view of the act of Congress and the facts of the case, is composed of the following, viz:

Extension of 50 per cent. allowance from 1st April, 1835, to December 31st, inclusive - - -	$14,440 50
Extension of the allowances for increase speed and extra horses and postillions for same time - -	12,420 50
Extension of the allowance for express mail in the winter of 1834–'5 - - - - - -	1,800 00
Allowance for extra coaches on the road from Washington to Baltimore, 1833,–'4, and '5, never before allowed or suspended - - - -	5,980 00
Interest on current pay withheld - - -	6,893 93
	40,635 93

The award was originally for $162,720 05; but after the payments were made, the solicitor informed the department that he had discovered an error in it of $1,163 16, leaving $39,472 47. Whatever may be the opinion of Congress as to the jurisdiction of the solicitor, it is now in their power to withhold or cause to be paid the balance of the award. If they think their committees, in censuring the allowance to contractors so unanimously, in 1834 and 1835, were so far wrong that the contractors were, in equity and justice, entitled to $161,000 more; if they think that, after being paid on the Wheeling route for much service never performed; on the Baltimore and Philadelphia route for two daily lines, and a part of the year three, when never more than two, and most of the time less than one, was actually run; and on the Washington and Baltimore

route, for six mails three years, and five through the fourth year, with allowances, for part of the time, for extra coaches, when never more than three, and often but two, mails were actually carried; and contractors were bound to carry express mails—*were actually carried, and contractors were bound to carry express mails*—whenever required; if, after all that has been said about extra allowances, they deem it just and politic to sustain the contractors in attempting to force them on the department under the administration of the undersigned, to the amount of $26,862, in the year 1835, for services alleged to have been performed without his knowledge, and contrary to his policy and will and the orders of the department; if, with all these facts and circumstances before them, Congress think contractors entitled to $39,472 47 more than has now been paid them, they will pass an amendatory act directing payment of the balance of the award. In this event, it is hoped they will also repeal the 17th section of the post office law of the last session, which makes the following requirements, viz:

"And be it further enacted, that, in all cases where any sum or sums of money have been paid out of the funds of the Post Office Department to any individual or individuals, under pretence that service has been performed therefor, when in fact such service has not been performed, or by way of additional allowance for increased service actually rendered, when the additional allowance exceeds the sum which, by the provisions of law, might rightfully have been allowed therefor, and in all other cases when the moneys of the department have been paid over to any person in consequence of fraudulent representations, or by the mistake, collusion, or misconduct of any officer or clerk of the department, it shall be the duty of [the] Postmaster General to cause suit to be brought, in the name of the United States of America, to recover back the same, or the excess, as the case may be, with interest thereon."

This provision was evidently made with reference to the cases reported by the committees of Congress; and, as the current business of the department has allowed, preparations have been made to carry into effect. But if Congress decide it to be equitable and just to pay Messrs. Stockton & Stokes $161,000 more than all the allowances reported upon and considered by the committee, it may be safely stated, that there is no case in which even-handed justice would require that this section should be carried into practice. Its execution, on the part of the Government, would be but the oppression of the weak, while throwing the public funds in immense sums into the lap of the strong.

The undersigned has now accomplished his object of laying before you, in as distinct a manner as he is able, the facts of this case, in which are found the reasons why he thinks the balance of the solicitor's award ought not to be paid.

If, in doing so, he has used an expression or word not necessary to the elucidation of truth, which may wound the feelings or injure the reputation of any one, he shall deeply regret it.

Having relieved himself from the obligation to guard the public interests entrusted to his charge, by giving the information in his possession, he commits this paper to your discretion, and the whole case to the disposition of legislative power.

With the highest respect, your obedient servant,

AMOS KENDALL.

Exhibit I, referred to in plaintiffs' petition, p. 10.

Letter from the Solicitor of the Treasury to the President of the United States, in reply to the Postmaster General.

OFFICE OF THE SOLICITOR OF THE TREASURY,
February 7th, 1837.

TO THE PRESIDENT OF THE UNITED STATES.

SIR: I have read, with great attention, the report of the Postmaster General in relation to the award, which it was my duty to make under the act of July 2d, 1836, for the relief of William B. Stokes and Richard C. Stockton, of Maryland, and Lucius W. Stockton and Daniel Moore, of Pennsylvania, and have to thank *your* justice for the opportunity afforded me of knowing its contents, and making the remarks which I now have the honor respectfully to submit, to be sent to the Senate with that report.

I do not deem it necessary to comment on the preliminary observations of the Postmaster General, respecting the action of the several committees of investigation authorized by Congress, and his declaration that allowances had been made by the late Postmaster General which were not known to the committees, further than to say, that I am not aware that, as regards the matter in hand, it is of any importance whether all or any of the claims adjudicated by me were known to those committees or to Congress.

Congress certainly had power to delegate to me authority to adjudicate claims which were never submitted to those committees or themselves. I consider it my duty, therefore, to look to the act constituting me the arbiter between the Post Office Department and the claimants, for the line of my duty, and did not suppose myself at liberty to go beyond its words, as there appeared to my mind no obscurity in them which required elucidation from the history of the times. The words of the act, so far as respects my jurisdiction, are as follows:

"That the Solicitor of the Treasury be, and he is hereby, authorized and directed to settle and adjust the claims of William B. Stokes and Richard C. Stockton, of Maryland, and Lucius W. Stockton and Daniel Moore, of Pennsylvania, for extra services performed by them as contractors for carrying the mail, under, and by virtue of, certain contracts therefor, by them alleged to have been

made and entered into with them, by Wm. T. Barry, late Postmaster General of the United States, and for this purpose to inquire into and determine the equity of the claims of them, or any of them, for, or on account of, any contract, or additional contract, with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make them such allowances therefor, as, upon a full examination of all the evidence, may seem right, according to the principles of equity; and that the Postmaster General be, and he is hereby, directed to credit such mail contractors with whatever sum or sums of money, if any, the said solicitor shall so decide to be due to them, for, and on account of, any such service or contract; and the solicitor is hereby authorized to take testimony, if he shall judge it to be necessary to do so, and that he report to Congress, at its next session, the law and the facts upon which his decision has been founded."

Notwithstanding the extensive terms of this act, the Postmaster General says, on the third page of his report: "It was believed by the undersigned, and he supposed by every one else, that this act gave the solicitor authority to examine and adjust, upon equitable principles, those items only which had been allowed by his predecessor and suspended by him, and not to consider and allow claims which had been presented and rejected under the former administration, or such as had never been heard of by the Postmaster General or Congress." "The Solicitor of the Treasury, however, has construed the law as giving him absolute and uncontrolled power over all new claims which might be presented as growing out of the contracts referred to in the act, and actually awarded the contractors $39,472 47 beyond the full amount of the suspension. It was thus virtually decided, that the allowances which had been so unanimously censured by the committees were equitable and just; that additional allowances of $122,101 46, never known to the committees, were all of like character; and that it was equitable and just to make them original allowances of $39,472 47, beyond the utmost liberality of the former Postmaster General."

"The undersigned differed widely from the solicitor, in reference to the equity and justice of these claims in general. He was [as] fully satisfied, as the human mind can be, that the contractors were not entitled to $20,000 of the $161,000 so awarded. But Congress had taken from him all power over the subject, as far as they gave jurisdiction over the solicitor, by peremptorily requiring him to pay whatever that officer might award within that limit. As far, therefore, as the jurisdiction of the solicitor extended, the undersigned could not refuse to pay, without a direct and palpable disregard of the requirements of the law. But it was considered by him equally his duty to refuse to pay any sums which the solicitor, through an erroneous view of his legal authority, might think proper to allow, until such payment should be required or authorized by further legislation. Believing that the solicitor had no jurisdiction to con-

sider and allow any claim, beyond those which had been suspended before the act of Congress passed, he refused to pay $39,472 47* allowed by him, over and above those claims. The reasons on which his construction of the law are based will be more fully given hereafter."

"The contractors memorialized the Senate, with a view of obtaining payment of this new allowance; and their memorial was referred to the Committee on the Judiciary, who have considered the case, and made a report to the Senate."

"The undersigned felt no responsibility to the country, in paying the $122,101 46 awarded under the act of the last session, because it was required of him by other public agents, to whom had been delegated the power to control him in such matters. Nor did he think, at the last session of Congress, that he was called on to volunteer information as to the nature of the claims, because the proposition was merely to submit them to the arbitrament of an equitable tribunal, which, it was presumed, would make full inquiry into their character and merits. But his attitude is now changed. He thinks that the solicitor, from an erroneous view of the facts and the law, has awarded the contractors $40,635 93 beyond the whole amount he had authority to consider; no part of which is due to them in law or equity."

From the foregoing extracts, it appears that the Postmaster General denies any jurisdiction over all claims of Stockton & Stokes for services under contracts with the late Postmaster General, on which their pay had been suspended by the present Postmaster General, unless all the items had been presented to, and suspended by him; that is to say, from the period when pay was suspended, the 1st of April, 1835, and that at which the contracts expired, the 31st December, 1835.

He also enters into an examination of the facts, respecting which I was constituted the arbiter between him and the claimants by Congress, and positively asserts, that services for which awards have been made by me, both before and after the 1st of April, 1835, never were performed.

I shall consider, first in order, the question of jurisdiction; for whether the services denied by the Postmaster General were performed or not, is a matter of no moment, if it be denied that the claims for those services did not come within my jurisdiction.

In order to a right understanding of this question, it is proper to consider in what points the Postmaster General and myself agree, and in what we differ.

The Postmaster General says, "Two things are necessary to give him (the solicitor) any jurisdiction whatever," viz:

1st. A contract by W. T. Barry, late Postmaster General.

2d. A suspension of pay upon contract by the present Postmaster General.

* This sum was originally $40,635 and over, but has been reduced by the discovery of an error by the solicitor.

In these two positions, I agree with the Postmaster General; but that high officer, adopting the censures upon his predecessor, pronounced by the committees of Congress, appears to think that the reports of those committees should be taken into consideration, with a view to throw light upon the construction of the act, and my action under it, though he expressly states, in another part of his report, that the claims submitted by Congress to my adjudication were never before those committees, or known to them or Congress.

In these last particulars, I differ from the Postmaster General. I neither can concur with, nor dissent from, the opinions of the committees of investigation. I pronounce no judgment upon their conduct, and am perfectly sure they could not have intended, in anticipation, to pronounce censure upon me for allowing claims respecting which, according to the Postmaster General's own showing, they were entirely uninformed.

Neither can I agree with the Postmaster General, who is so strict a constructionist, whenever my powers, for the satisfaction of justice withheld, may take money from the surplus fund of his department, in thinking that I have a right to save that fund by drawing within the scope of my jurisdiction, at one wide sweep, all the claims heretofore settled in his department with Messrs. Stockton & Stokes, in order to determine whether too much or too little has been paid for services rendered, or whether payment has been made for services never performed, with a view to make a deduction from the compensation of services specifically submitted to my decision. Indeed, it was with surprise, approaching astonishment, that I discovered, in some of his letters to this office, as well as in his report to you, that a man of his reputed precision of mind could entertain for a moment so loose an idea.

To conclude these preliminary remarks, made with a view to clearness in the free examination in detail, which I am obliged to make, I do not think I am possessed of jurisdiction over anything that was not the subject of a contract with the Postmaster General, and on which contract the pay of the contractors has been suspended by the present Postmaster General.

The present Postmaster General, as will be seen by a reference to the account rendered by the department to the contractors, and marked exhibit No. 31, among the documents transmitted with my report to Congress, has suspended from credit five classes of allowances, viz:

1st. For increased expedition.

2d. For extra horses and postillions.

3d. Increased weight of mails.

4th. Additional daily line from Baltimore to Philadelphia, and Baltimore to Washington.

5th. Extra mails, &c.

Now I admit I am in error, if I have made an award for any claims that do not come within one or the other of these classes.

But, even in these cases, the Postmaster General denies me jurisdiction beyond the 1st April, 1835. This question, then, shall first be considered.

The act directs the solicitor "to inquire into and determine the equity of the claims of them," (the contractors) "or any of them, for or on account of any contract, or additional contract, with the said Postmaster General, *on which their pay may have been suspended by the present Postmaster General.*"

Now the contracts in question expired on the 31st December, 1835, and I was, and still am of opinion, (in which I am sustained by the Attorney General and the Judiciary Committee of the Senate,) that the limitation intended by these words—*on which their pay may have been suspended by the present Postmaster General*—refers to the word "contract," and does not exclude any claim whatsoever for services either before or after the 1st of April, 1835, provided they were performed in pursuance of such contracts. I think the structure of the English language requires this construction. We say, and with propriety, "pay has been suspended on a contract," but we do not say, "pay has been suspended on a claim." The proper phraseology would be, "the payment of *a claim* has been suspended." The Postmaster General appears to think, nevertheless, that the limitation of jurisdiction has reference to the word "claims," and that it excludes all *all* claims for services subsequent to 1st of April.

Suppose, then, that we admit that the words of limitation refer to "claims," instead of "contracts," still may not a service rendered after the 1st of April, 1835, be paid for? What are the claims which Messrs. Stockton & Stokes, in the case of increased expedition and extra horses and postillions, prefer? They are for services which they allege, and have proved to my satisfaction, to have extended from the 1st of January, 1834, to the 31st of December, 1835. Although the pay of the contractors "on these claims," if we must allow that to be the construction of the sentence, may have been made quarterly, according to regulation, up to the 1st April, 1835, yet the claims are unbroken and continuous from the 1st January, 1834, to December 31st, 1835; and therefore it may with propriety be said, that pay has been suspended on them by the present Postmaster General, and are, therefore, within my jurisdiction. Although this suspension of payment took place on the 1st of April, yet the claim comes within that suspension, whether the services were performed before or after the 1st April.

My first award, therefore, proof being exhibited of the services having been continued to the 31st December, 1835, gave compensation up to that day. Whereupon the Postmaster General addressed to me the letter marked A, and bearing date the 24th September, and inquiring "upon what ground I thought the law gave me power to allow claims which had never, before the passage of the late act, been presented or suspended at the department."

In my answer of the 27th September, 1836, marked B, I referred the Postmaster General to the words of the act, as the best answer I could give to his inquiry, and, moreover, remarked as follows: "The direction of the act appears to me perfectly plain. It is, that I am to make an equitable allowance for extra services under contracts made with Mr. Barry, on which the pay of the contractors had been suspended by you. I understand, by the term 'the services,' all services rendered under those contracts, as I find no expression in the act limiting my authority to a part."

The contractors have exhibited proofs, which were not before you, that the extra services in question were continued until the 31st December, 1835, when the contracts expired, and made their claims accordingly. After examining the testimony laid before me by the contractors, as to the reasonableness of the allowances made by Mr. Barry, I consider them equitable. But before making up my decision, supposing you had the power to dispense with the extra services required by him, I inquired, in my letter of the 23d inst., "whether any notification was given to the contractors, that these services might be continued after the 1st of April, when their pay was suspended;" and received for answer, from you, "that not considering the services for which the allowances, by the late Postmaster General, were suspended in the account of Messrs. Stockton, or Mr. R. C. Stockton, on the routes from Baltimore and Washington to Wheeling, as ever legally authorized, the department has given no notification to those gentlemen to discontinue those services, other than declining to pay them, on the grounds stated in the paper now before you."

Messrs. Stockton & Stokes claim that these contracts were legal, and that they had acquired rights under them. You, under a conviction of duty, decided that they were illegal, and suspend their pay, but do not direct them to discontinue the services, (and) they continue them to December 31st, 1835. They do not, after your decision, look to the department for compensation, but appeal to Congress; and Congress recognises those contracts, so far as to direct me to settle their claims under them, upon principles of equity; and as those contracts, thus recognised, did not expire until the 31st December, 1835, I allowed compensation until that period, as I did not, and do not now, find any provision in the act limiting compensation to the period at which you suspend the pay of the contractors.

As the Postmaster General denies the performance of services by the contractors, I then withdrew my award, and requested him, if he had any proofs in his department of the non-performance of the services for which an allowance had been made, to forward them to my office.

On the 29th he sent me sundry schedules and other documents, and addressed me an answer marked C, in which, after a few observations on the construction of the act, to be derived from its

terms, he enters upon a long argument on the facts, to which I shall hereafter have occasion to revert when I come to consider the proofs on which my awards were founded.

This letter did not change my opinion as to the construction of the law; and so clear was my conviction that I had given the true construction to it, that I hesitated for some time whether I should refer the question of jurisdiction to the Attorney General or not, more especially as he was then absent from the city. My respect, however, for the intellect of the Postmaster General, at length induced me to do it, and I wrote the Attorney General (then in New York) the following letter on the 12th October, 1836, marked D:

Sir: "At their last session Congress passed an act for the relief of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, on the construction of one point of which I must ask the favor of your opinion. I would not have troubled you with this application until your return to the seat of Government, but Messrs. Stockton & Stokes represent their pecuniary situation to be such as to compel them to solicit, with much earnestness, an early decision on their claims; and as I, also, am desirous to get through with the very unpleasant duty assigned to me by the act as soon as possible, I will be obliged if you can favor me with an early reply."

"The act provides 'that the Solicitor of the Treasury be, and he is hereby, authorized and directed to settle and adjust the claims of William B. Stokes and Richard C. Stockton, of Maryland, and Lucius W. Stockton and Daniel Moore, of Pennsylvania, for services performed by them as contractors for carrying the mail under and by virtue of certain contracts therefor, by them alleged to have been made and entered into with them by William T. Barry, late Postmaster General of the United States; and for this purpose to inquire into and determine the equity of the claims of them, or any of them, for or on account of any contract or additional contract with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make them such allowances therefor as, upon a full examination of all the evidence, may seem right according to the principles of equity.'

"The suspension of pay under the contracts with the late Postmaster General, Barry, took place under the direction of the present Postmaster General, on the 1st of April, 1835; aad the contracts themselves being decided to be unauthorized by law, the contractors presented no accounts arising under them for settlement at the Post Office Department, after that decision; but, considering these contracts as recognised by Congress, so far as to allow them equitable compensation for services performed under them, they have presented claims to me for extra services, which they allege to have been performed under them, until the 31st December, 1835. The equity of the claims from the 1st of April to the 31st December, 1835, when the contracts in question would necessarily have ended,

being additional to contracts which expired on the 31st December, 1835, must of course depend upon the evidence which may be exhibited. With this, especially as it is not all yet taken, I do not mean to trouble you; but the question I desire to have solved is, whether I have jurisdiction, under the act, of any claims which may be presented for services alleged to have been rendered between 1st of April and the 31st December, 1835.

"My impressions, derived from conversations during the late session, in which I expressed a desire, before the passage of the act, that Congress would not devolve upon me duties which appeared to me to be incongruous with the nature of my office, and duties, too, of a very unpleasant, as well as highly responsible character, were, that the object of the act was to put an end to all further application to them by appointing a tribunal to pass, finally, upon the equity of all the claims in dispute. On reading the act, however, I found that the claims, under certain contracts specified therein, were excepted. To these I have no occasion to call your attention. But the act, as you will perceive from the above quotation from it, directs me to 'inquire into and determine the equity of the claims of them,' (Messrs. Stockton & Stokes,) 'for or on account of any contract or additional contract with the said Postmaster General,' (the late Wm. T. Barry,) '*on which their pay may have been suspended by the present Postmaster General.*' The words underscored, I supposed, were intended to specify *the contracts*, the claims under which I was directed to settle, and to exclude my action on any claims which did not arise under *contracts* on which the pay of the contractors had been suspended; but I still supposed that it had been my duty to inquire into and determine the equity of *all claims* that should be made under such contracts, whether for extra service rendered before or after the 1st of April, 1835. If reference had been intended by the words of limitation 'to claims,' and not to 'contracts,' the appropriate expression would seem to be 'the payment of which may have been suspended,' instead of the words used in the act, '*on which their pay* may have been suspended.'

"Upon these words of limitation, whether referring to the word 'claims,' or the word 'contracts,' will depend, I presume, whether I have, under the act, jurisdiction of claims arising from the contracts in question for service between the 1st April and the 31st of December, 1835.

"Though my mind still inclines to the opinion above indicated, as to the construction of the act and the extent of my jurisdiction, yet some doubt has been excited on the subject, and wishing, in so responsible and painful a duty, not to extend my power one inch beyond the law imposing, I have asked your aid to solve that doubt. It is my duty to fulfil the intention of Congress, and if your opinion confirm the bias of my own judgment, that the act requires me to consider and decide upon *all claims* under the contracts in question,

whether for services before the 1st of April, 1835, or between that day and the 31st December following, I shall not shrink from the performance of that duty because it is accompanied with heavy responsibility."

To my letter the Attorney General made the following reply, on the 31st October, 1836, confirming my construction of the act:

"SIR: I have had the honor to receive your communication of the 12th instant, and have given to the act of 2d July last, 'for the relief of W. B. Stokes, Richard C. Stockton, Lucius C. Stockton, and Daniel Moore,' as deliberate and mature a consideration as I have deemed necessary to the decision of the question proposed to me by you.

"In my judgment, the act authorizes and directs you to inquire into and determine the equity of all claims made by the persons named, or any of them, for or on account of any contract or additional contract for carrying the mail, alleged by the claimants to have been made and entered into with them by W. T. Barry, late Postmaster General, and on which contracts the pay of the claimants has been suspended by the present Postmaster General—whether such claims are for services alleged to have been performed *before or after* the time when the pay was suspended.

"To apply my understanding of the law distinctly to your question, I think you have jurisdiction, under the act, of any claims which may be presented for services alleged to have been rendered between the 1st April and the 31st of December, 1835, for or on account of any such *contract* as is described in the act."

Such is my letter, and such the Attorney General's opinion.

The Postmaster General has thought proper to allude to my reference to the Attorney General for his opinion, and his answer, in the following terms:

Before the undersigned enters upon the consideration of the legal authority of the solicitor to consider and allow other claims than those suspended, he deems it necessary to advert to the proceedings between the department and that officer while the case was pending. On first receiving the solicitor's award, in part, the undersigned expressed his surprise to him, by letter, at the construction he had given the law. After some discussion the award was withdrawn, with the view, as was supposed, that it might be reviewed and corrected. Some days afterwards a letter was received from the solicitor enclosing a very brief opinion of the Attorney General, declaring, in *general terms*, that he thought the solicitor had jurisdiction of *other claims* than those suspended. *Being sure, from the tenor of the opinion, that the specified points at issue had not been stated to the Attorney General*, the undersigned inquired of him, and learnt that neither the views of the department, nor even the fact that any difference of opinion had arisen between the solicitor and its head, had been communicated to him. On being asked whether his opinion was so clear that a history of the act, and a specific

statement of the points and principles involved, might not change it, he replied *that it was not, the opinion given having been formed upon a cursory examination of the acts, without a case presented.* As the opinion of the undersigned was formed, and clear, he had no motive to trouble the Attorney General with a view of the case, and now alludes to the subject only to show how much importance is due to that opinion thus elicited.

The Postmaster General takes exception to my not apprising the Attorney General of the fact of the difference of opinion between himself and myself, and to my not having "*specified the points in issue.*"

To this exception I have a very simple reply, and that is, that I could not possibly conceive it to be of the slightest consequence whether I informed the Attorney General of the difference of opinion between the Postmaster General and myself or not. It could have no bearing upon the right construction of the act, as to the only point upon which I desired the opinion of the Attorney General, and I do not suppose that a knowledge of that difference of opinion could have had the smallest influence upon the construction of an act of Congress, by any lawyer having the smallest regard to professional reputation, much less with a man of the distinguished learning, and high character for integrity and talent, of the Attorney General. My only motive for not making it known, as the Attorney General was then in New York, was to save the trouble of writing what was altogether unnecessary; and as the Attorney General returned to Washington before he answered my letter, if I did not mention the difference of opinion between the Postmaster General and myself, it was altogether accidental, for I certainly had no motive to conceal it from him; and, as the Postmaster General thinks it of importance, I regret I did not lay before the Attorney General the letter, though it was principally occupied by a discussion of the facts; the responsibility of deciding upon which I had no disposition to put off (indeed I had no right to do it) from my shoulders to his. But as to the omission of a statement, specifying the points in issue, "or stating a case" which presented the only point on which I desired his opinion, I fearlessly appeal to the Attorney General, as I now most respectfully do to yourself, to examine the whole of my letter above recited, and particularly that paragraph which commences with the words "suspension of pay," and ends with the words "31st December, 1835," in which *the case is stated* as connected with the construction of the act on which I desired his opinion, and then to decide whether I could have put my question more fairly, or more directly, explicitly, and clearly. Nor could the Attorney General, after saying he had given the act "as deliberate and mature a consideration as he deemed necessary to a decision of the question proposed to him by me," have called out of the English language words which could more clearly give his opinion, that my jurisdiction extended to all claims of Messrs.

Stockton & Stokes for services under contracts with his predecessor, in which their pay had been suspended by the present Postmaster General, whether those services were performed before or after the 1st of April; and yet this gentleman, with respect to this opinion, so perfectly clear, positive, precise, and distinct, says, in his report to you, that the Attorney General had declared, "in general terms," that he thought the solicitor had jurisdiction of *other claims* than those suspended; and alleges that that high officer had said, in conversation with him, that he had given his opinion upon a "cursory examination of the act, without a case stated," and feels at liberty, with respect to the manner in which I had asked that opinion, to make a disreputable imputation of unfairness in it, with a view to affect the answer; and charges me, moreover, with the heinous offence of not making known the views of the department, nor even the fact, so necessary to enlighten the Attorney General in the true construction of an act of Congress, that a "difference of opinion had arisen between the solicitor and its head."

Having laid before you the opinion of the Attorney General, I will further occupy your valuable time on the subject of jurisdiction only to present to you, as the Postmaster General has altogether omitted to do in his report, the remarks on this point of the Senate Judiciary Committee, to whom was referred the petition of Messrs. Stockton & Stokes, respecting the refusal of the Postmaster General to pay them the sum awarded.

The committee say: "From this view of the act of the last session, the committee did not deem it proper to go into the examination of the claims decided upon by the solicitor, except so far as to ascertain whether the claims adjudicated upon were submitted to his decision by the "act for the relief of W. B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, approved 2d July, 1836." Upon this branch of the subject, the attention of the committee has been principally directed to the just construction of the language of that part of the act conferring upon the solicitor his powers. The solicitor is directed to inquire into and determine the equity of the claim of them, or any of them, for, or on account of, any contract with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make them such allowances therefor as, upon a full examination of all the evidence, may seem right, according to the principles of equity," &c.

"By the expressions here employed, it seems to this committee that two things are only requisite to give power or jurisdiction to the solicitor."

"1st. That the claims presented should be for, or on account of, contracts made with the late Postmaster General."

"2d. That the present Postmaster General shall have suspended the pay. The committee have not discovered that any allowance has been made by the solicitor, except in cases falling within his

jurisdiction when tested by these restrictions. It is true, he has allowed compensation for services adjudged by him to have been rendered by the petitioners since the late Postmaster General retired from office. Still these claims were on account of contracts made by him; and the act of Congress plainly submits to the adjudication of the solicitor all such cases, without any reference to the time when the services were rendered; and it cannot be believed, that the time when the services were rendered, or the claims fell due, was deemed anywise material by Congress, or some expressions restricting the powers of the solicitor would have been introduced into the act. Besides, the act directing the solicitor to settle the accounts passed after the expiration of all the contracts, and after the rendition of all the services which may have been performed under them. From which facts, in connexion with the broad and comprehensive language of the act, it may fairly be inferred, as the intention of Congress, that the whole claims for services, under the contracts specified in the act, were to be adjusted and settled by the solicitor, without regard to the time when the services were performed. And further, that a suspension of any portion of the pay, even for a single quarter, upon such contract, by the present Postmaster General, authorized the solicitor to investigate all the claims of the petitioner under such contract."

After presenting you with this full and explicit opinion of the Committee on the Judiciary, composed as it is of learned and able lawyers, in addition to that of the Attorney General, both of which confirm my own in every particular, as it respects my jurisdiction, I should consider it a work of supererogation to examine further the objections of the Postmaster General.

The Postmaster General, however, is not content with disputing my jurisdiction, and declining the positive duty enjoined upon him by the act of Congress, notwithstanding the explicit opinions of the Attorney General, and the committee of Congress who reported the act, and who certainly knew what jurisdiction they intended to give; but he goes further, and in defiance of the act of Congress, which assigned to me (much against my wish) the full and final adjudication of the facts, he now not only makes himself a party in the controversy submitted to my adjudication, but, party as he has made himself, erects himself into a court of review of that adjudication, though Congress, by directing my report to be made to them, clearly indicated that my responsibility was to that body, and not to the Postmaster General.

The Postmaster General denies that the services for which I have awarded equitable compensation were performed; and after making this denial, and unsparingly denouncing to the appointing power of the Government, without any notice to me, the action of this office, he enters into an argument to prove the justice of that denunciation *upon the* strength of official assertion of facts, without noticing the reasons assigned in my report to Congress, or the proofs on oath on which it was founded, although, as a difference of

opinion existed between us, I had frankly laid the whole before *him.*

As the inference from his report to you would necessarily be, that the awards I had made were utterly without reason, and that the Treasury had been opened without proof of claims, I am under the painful necessity, having answered his objections on the score of jurisdiction, of replying to his report, and of making a full exhibition of his official assertions in contrast with the proofs, under oath, exhibited to me. In doing this, I must make liberal quotations from my report.

In my report, I say, "that the claims first presented were made for extra services performed on the route from Washington and Baltimore to Wheeling, being numbered 1,201, 1,389, and 1,390. They were—

1st. For increased expedition;

2d. For extra horses and postillions; and,

3d. For increased weight of mails.

I shall consider these three claims in the order in which they are stated; and first, for increased expedition.

By the proposal advertised until the 26th September, 1831, for carrying the mails daily between Baltimore and Wheeling, from 1st January, 1832, to 31st December, 1835, in four-horse post coaches, three days and three hours were allowed for going out, and three days and 1 and ½ hour returning.

By a contract bearing date the 13th October, 1831, Richard C. Stockton and William Neil bind themselves to carry the mail according to the above proposal, for a sum which is ascertained by an apportionment between the routes in question and the other routes contracted for, to be - - -	$4,550 00
They bound themselves also, if required by the Postmaster General, to carry a daily mail in 2½ days, and to run also a tri-weekly line, to carry the way mail for the additional compensation - -	8,950 00
But, in consequence of the solicitation of a number of members of Congress, they propose an increase of speed on sundry routes by a letter of the 23d of December, 1831, for the annual compensation of - - - - - - -	15,988 00
Of which the portion for the routes from Baltimore and Washington to Wheeling, on which they were to carry the mail in two days in summer, and 2½ in winter, was, per annum - - - -	6,750 00
Or $1,687 50 per quarter.	

The late Postmaster General accepted this offer, and ordered the service on the 1st January, 1832.

"This increased speed was accomplished in the time stipulated, until it was rendered impassable by the breaking up of the national road for repair by the Government, when the Postmaster General allowed from six to twelve additional hours, without intending to diminish the contractors' pay, but merely to make an allowance in respect of time equivalent to the delay occasioned by the obstructions thus created by the Government itself. This is proved by the depositions of the Hon. Andrew Stewart, of Pennsylvania, and the Rev'd O. B. Brown, then superintendent of mail contracts. The former, in his affidavit, marked exhibit No. 3, says, "I furthermore certify, that great obstacles were interposed by the agents of the Government in taking up and repairing the Cumberland road, so much so as to render it utterly impossible to effect, with any force, the transportation of the mail over in stages with the required speed; first, by taking up the old bed, and covering the surface with large loose rocks and stone; and afterwards, when repaired, in placing logs, stumps, brush, and other stones, on the alternate sides of the road at short distances, varying from forty to eighty feet apart, so as to force the carriages to run zigzag across the road to prevent the cutting it into ruts, and to pack the stone evenly. This rendered it impossible to drive rapidly without hazarding the lives of the passengers and the security of mail stages at all times, especially after night. These difficulties were represented to the department by myself and others, and an order was made, in consequence, extending the time allowed, I believed, about twelve hours. This I considered at the time, and now consider, altogether inadequate to the unavoidable loss of time occasioned by the obstructions placed in the way of the mail by the acts and agents of the Government, and compelled the contractors to increase the speed on other portions of the road where those obstructions did not exist, to make up the time lost after the order giving the twelve hours additional. These facts came under my personal knowledge and observation, in frequently passing the road in the stages and otherwise at the time."

Mr. Brown, in his deposition, marked No. 4, says, "that, in the contract of R. C. Stockton & Co., for transporting the mail between Baltimore and Washington city, and Wheeling, via Frederick and Cumberland, and on the national road, the contractors, for certain allowances of compensation, obligated themselves, from January 1st, 1832, to run the mail through in two days in summer, and in two and a half days in winter, from Baltimore to Wheeling; or to four days from Baltimore to Cincinnati in summer, and four and a half days in winter; that, whilst they were performing the service at this rate, it was shown to the Post Office Department that the Government itself, through the War Department, had broken up a part of the road for the purpose of making repairs on the same, by means of which it became impracticable, without immense loss and danger, to run in that time, and that the contractors, in essaying to

keep the full speed, had broken and destroyed several coaches, and put in jeopardy the lives of the passengers and drivers; that the Postmaster General, in consideration of the obstruction having been occasioned by the Government itself, conceived it but equitable, on the part of the department, to allow the contractors so much time beyond the two and two and a half days, as to enable them to carry the mail through with the same labor and expense that would have been required for performing the service in two and two and a half days, if the obstructions had not existed. With this view the time was extended, to what period I do not recollect, but several hours' additional time were allowed—I believe from six to twelve hours. This additional time I know to have been allowed purely on account of the obstructions which the Government had occasioned, and it was intended to be no more than equivalent to the delays which such obstructions necessarily occasioned. The Postmaster General so expressed it to me at the time, and never intimated an intention or thought of diminishing their compensation on account of it."

The concurring testimony of both these gentlemen is confirmed by the schedules, which extend the time at various periods between the 22d December, 1832, and the 31st December, 1835, from six to thirteen hours beyond the two and two and a half days, which were called the *increased* speed for winter and summer.

I have been more particular in quoting the testimony on this point at large, because the time of the "*increased speed*" being thus prolonged, it has been confounded with the "*improved speed*," proposed in the original bid, and inserted in the contract, (exhibit No. 1,) which was two and a half days for the transportation of the mail between Baltimore and Wheeling, and it has, in consequence, it is presumed, been alleged that the "*increased speed*" was not continued after [the] year 1833, because, after that year, no speed greater than the two and a half days between Baltimore and Wheeling was required by the schedules, which was the improved speed proposed in the original contract. But it has appeared to me that the same equitable considerations which induced the late Postmaster General to add twelve hours to the time of "*increased speed*," would, if the proposition of December, 1831, had never been made, have induced him to allow twelve additional hours for the "improved speed," making it three days instead of two and a half. I have, therefore, considered the time of two days and six hours, and two and a half days in summer, and two days and nineteen hours or three days in winter, in which the mail was carried at different periods after the road was broken up between Baltimore and Wheeling, as increased speed within the equity of the stipulation of December 23, 1831.

If any more testimony were wanting to shew that increased speed, by agreement with the department, was two and a half and three days, or nearly so, in summer and winter, after the 3d October, it is

furnished by the acknowledgment of the Postmaster General himself, who, in his report, says:

"In September of that year, the contractors produced proofs, that in consequence of the Cumberland road being broken up for repairs, it was scarcely passable and not at all safe to run at the speed of two days. In consequence of which they were, on the 3d October, 1832, allowed two and a half days each way; and, on the 22d December, they were allowed two days and nineteen hours going out, and two days twenty hours returning."

The schedules, after this time, conformed to the increased speed thus extended by agreement of the department, as an equivalent for the delay occasioned by the breaking up of the national road for repairs; and instead of serving for proof, (as the Postmaster General contends,) that no increased speed was performed by the contractors after the 3d October, 1832, they, on the contrary, prove that increased speed, in the meaning of the parties, was performed, throughout the whole time claimed, from the 1st of January, 1834, to the 31st December, 1835, and thus the whole reasoning of the Postmaster General, divided from the schedules, falls to the ground. The Postmaster General says, that "it appears from the books and files of this department, that from the 1st of January, 1832, to about the 1st of May, of that year, none of the improved service was performed, the mail being carried through in a daily line, occupying about three days in the passage, as under the old contract."

I notice this charge of want of performance, merely because it was introduced to show the exorbitancy of my awards. With this view of the subject, all that is necessary for me to say is, that I have made no award for this service. No claim for these services was made by the contractors. The suspension of pay, made by the present Postmaster General, went back only to the 1st of January, 1834, and the account of the contractors with the department, furnished by him, gave them credit for these services up to that time.

For this reason, I pass over all the other remarks of the Postmaster General, as having no bearing upon my *awards*, until he comes down to the 18th November, 1835, when an order of the department, retrenching the allowances of increased expedition and extra horses and postillions, was made, to take effect from the 1st December, 1833.

The Postmaster General states, that the services thus rendered were never restored afterwards, nor performed; and, in proof of this, refers to the deposition of Major Hobbie, Assistant Postmaster General, and Mr. Suter, pay clerk, who stated that Major Barry, about a year and a half after the restoration of the allowances, as claimed by the contractors, said, that he did not intend to restore the allowance retrenched in November, 1833.

But the following depositions, as to what Mr. Barry said, *at the time of making the restorations*, and his own letter, proved conclusively, that there has been some misapprehension of what Mr. Barry

said, or that his own memory was defective, and show that a *restoration was actually made.*

A deposition of the Hon. Andrew Stewart, of Pennsylvania, late a member of Congress, who, in a certificate sworn to by him, says: "I certify, that shortly after the order of the Post Office Department, suspending or discontinuing the increased speed, postillions, and second line, on the line from Washington and Baltimore to Wheeling, I had an interview with the late Postmaster General, Mr. Barry, on the subject, in which I remonstrated against the order, and represented the importance of continuing the speed and other facilities, on this most important line of communication to the west. He concurred in my views, explained the causes which produced the order, and concluded by saying they should be restored, and especially if such was the desire (as I suppose it to be) of the western members of Congress generally. Some time afterwards, I again called and presented him a letter, signed by some twenty or thirty members, urging the continuance of the facilities, and the pay of the same. He then said distinctly, that it should be done; that the speed, postillions, and second line, on this route, with the compensation, should be continued, and that I might *so inform the contractors, which I did accordingly.* I mentioned, that at my suggestion, and perhaps some others, the contractors had never intermitted the speed, the employment of postillions, and so forth, in consequence of the suspension, and that the compensation ought not to be affected by the order. He said it should not. I afterwards got a number of other names to the letter, which increased the number of members to between seventy and eighty, which I believe was filed in the office as evidence to justify the department in the restoration and continuance of the facilities and speed abovementioned on this route."

"The promise and order of the Postmaster General was positive and distinct, that they should be restored, that they should not be affected by the order of suspension or discontinuance, and that *he authorized me to so inform the contractors, which I did.*"

The next proof, to the point under consideration, is the copy of a letter from Major Thomas D. Carneal to the Hon. Amos Kendall, to which is annexed his oath before a magistrate, and is as follows:

BALTIMORE, *May* 2*d*, 1835.

"SIR: In December, 1833, on my way from the west to Philadelphia, Mr. Stockton, of Uniontown, made known to me that the Postmaster General had suspended the extra allowance on that route; that, owing to the increased weight of the mails, the contractors could not, without ruin to them, continue the extra line or teams, and extra postillions, placed on the route, then necessary to transport the mails. Having noticed between Wheeling and that place the great weight of mails, I advised Mr. Stockton to continue the extra teams, and postillion horses, until a full representation of the facts could be made to the department, and a decision had as to

the restoration of the order made, placing, or rather requiring, the extra teams, &c. on the route. As an inducement for Mr. Stockton to adopt the advice given, I promised him that on my arrival in Washington, I would make a full and fair representation of the facts, and immediately apprize Mr. Stockton, of this city, of the result. At once he determined to adopt my advice, and let no exertion on his part be wanting on the ground of expense, until a decision could be had."

"I reached Washington about the 10th January, and, on the next day after my arrival, made known to Major Barry the peculiar hardship and difficulties the contractors on that route had to contend against. He admitted the fact, but hesitated as to the power of the department to grant the relief. After much conversation on this subject, he referred to Major Hobbie, who was called in, and to whom I was introduced by him, and the substance of the conversation had between us was made known to him. With Major Hobbie I had several interviews, and was shown by him a recommendatory letter from sixty or seventy members of Congress, urging upon the department the restoration. To aid me in this, I called on Col. R. M. Johnson and Major Eaton. We met at the room of the Postmaster General, and the subject was taken up, fully discussed, and resulted in the restoration of the original order making the extra requisition, with the allowances then paid by the department for such extra service prior to the suspension order. I am, &c.

(Signed) THOMAS D. CARNEAL,

HON. AMOS KENDALL, P. M. G.

Sworn to before RICH'D SIMMES, *J. P.*

The next document is the deposition of the Rev'd O. B. Brown, chief clerk of Mr. Barry, who, from his official siuation, would be more likely to be acquainted with his views, intentions, and acts, than any other person. As the deposition contains other matters, I submit at present that part of it only which relates to the restoration of the allowances retrenched. The extract is as follows, viz:

"Towards the close of 1833, the Postmaster General directed a great many retrenchments to be made in mail routes which would diminish the pay of contractors. The retrenchment of service was to take place from the 1st December, 1833, and of pay from the 1st of January, 1834. Among those, this route of Stockton & Co. was to undergo some retrenchment, but to what amount I do not distinctly recollect. Soon after this order was given, the Postmaster General expressed to me great reluctance to interrupt the progress of this great western mail, as it would cause much excitement; and he added a wish that they might continue the service, and stated, that if they did so he would pay them for it. He appeared to be much concerned for this route, and always showed more than ordinary feeling when speaking of it, as he regarded it as the great artery of circulation for all the great west. Soon after this—I do not

recollect the time, but I believe it was in the beginning of January, 1834—he told me he had determined to restore the whole of what had been retrenched on this route, and expressed great satisfaction to learn that the contractors were continuing the service.

"He remarked that it was a very delicate subject; for if it should be known that he had restored one route, he should be borne down with applications from every part of the Union; but that the public mind evidently called loudly for this restoration, and he had determined to make it, and wished to do it in such a way as would be least likely to be known to others. I do not pretend to repeat his words, but such was the substance of his remarks. As it did not then belong to my division of the duties of the department, I did not make any inquiries further on the subject. What he said to me on this subject was purely spontaneous, and without any inquiries on my part. He observed, that many members of Congress had made strong applications for the restoration, and that from the representations made, there appeared to be very extensive feeling on the subject, which made it his duty to grant the restoration of the allowances which had been retrenched."

The last document is a letter written by Major Barry himself, to Mr. Stockton, 2d February, 1834, and is in the following words, viz:

"My Dear Sir: I have received yours of the 31st. It was intended to direct you to continue improvements already on the road to Wheeling, as indispensable. The form of the order does not perhaps meet the case, and it will be important for you to be present when it is done; but this need not hasten your visit to Washington, to the neglect of other important engagements, and can be finally adjusted hereafter. I would say more, but the subject is a delicate one, that can be better arranged by personal converse. Be assured of my disposition to do what is just and liberal.

Yours, very sincerely,

(Signed) W. T. BARRY.

R. C. Stockton, *Baltimore, 2d February*, 1834."

These documents, which relate both to increased speed and extra horses and postillions, left no doubt on my mind that the allowances retrenched in the fall of 1833 were restored; that the restoration was communicated, by the authority of the late Postmaster General, to the contractors, and induced them to continue the services which they, in consequence of the expectation of their restoration, had in fact never intermitted while the retrenchment was actually in force. But the Postmaster General *asserts*, that the allowances retrenched were not only restored, but the service not performed, either before or after April 1st, 1835.

That they were restored, has been already *fully proved* by the oaths of Mr. Stewart, Major Corneal, the Rev. O. B. Brown, and a letter in the handwriting of Mr. Barry himself, which have been copied on the foregoing sheets; and that the services were contin-

ued from the 1st January, 1834, to the 31st December, 1835, is established beyond controversy by the oaths of no less than seven witnesses, viz: George S. Evans, James P. Carlton, James Workman, William Hart, R. L. Barry, and David Moreland, and the certificates of nineteen other witnesses, to wit: J. C. Simpson, Andrew Stewart, Mathew Allen, Thos. Sloan, Sam. Evans, John Campbell, Jno. A. Langston, Henry Bevans, Wm. McMillen, R. Banting, Jas. Stoddart, jr., Thos. Thistle, James Stoddart, James Black, J. Huddleston, James C. Wright, W. Thornbury, John Kelly, and James Workman. All the persons above named are postmasters and tavern-keepers, and other reputable residents on the National road, and, of course, occupying the very situations which best qualified them to be exact witnesses; and their depositions and certificates were laid by me before the Postmaster General, that he might produce testimony to rebut their evidence, if to be found in his department. The only papers I now recollect to have been produced, as they have all been withdrawn, which were entitled to the name of evidence, were a bundle of schedules, all of which went to confirm the performance of increased speed, as agreed to by the department on the 3d of October, 1832.

This mass of evidence produced entire conviction in my own mind, and, acting judicially, I felt myself bound by it, notwithstanding the new rule of evidence indicated in the following sentence, which is contained in the Postmaster General's letter of the 29th September, 1836, marked C.

"I informed you that the department was not aware, by any evidence furnished to it, that those services were continued from the 1st April to the 31st December, 1835. *And this, from a department which claims to understand its own business, was considered by me tantamount to a direct assertion that the services had not been performed.*"

I have a higher opinion of the laborious industry and attentive supervision of the Postmaster General over all branches of business under his charge, but I could not, acting in a judicial capacity, reverse all the known rules of evidence, and admit a declaration of a want of information, respecting a service under his superintendence, to set aside positive evidence given under oath by unimpeached witnesses, many of them personally known to myself, without allowing to the Postmaster General the attribute of omniscience. The force of testimony which would arise from such an attribute can only be given by an act of Congress, making a negative declaration of the Postmaster General to outweigh the affirmative testimony of the most respectable witnesses under oath.

The Postmaster General, by his report, has endeavored to make on your mind the impression that I have violated the law, and disregarded all reason in my actions on the facts. He has weakened the high authority by which my construction of the act of Congress was sustained, by an unfounded imputation of unfairness in

the manner of asking the Attorney General's opinion, and concealed from you the ample testimony, under oath, on which my decisions were made, all of which was laid before and known to him. I will not imitate this example of injustice. I disdain, sir, while I lay before you the most positive proofs, on the oaths of unimpeached witnesses, utterly irreconcilable with the positive declarations of the Postmaster General, to leave you uninformed of the manner, perfectly simple and obvious to me, by which the declarations may be reconciled with sincerity, though not with accuracy, at least so far as respects increased speed. His error consists in not considering increased speed, which was originally two days in summer and two and a half days in winter, to have been increased twelve hours, as an equivalent for the delay occasioned by the National road being broken up for repair by the Government, by an agreement between the department and the contractors. This is fully proved by the deposition of the Hon. Andrew Stewart, and the Rev. O. B. Brown, as is shown in the foregoing pages, where their testimony is spread out at large, and admitted by the present Postmaster General in his report to you, without, however, adverting to the necessary consequence of that omission. In that report he says: "In September of that year, (1832,) the contractors produced proof that, in consequence of the Cumberland road being broken up for repairs, it was scarcely possible, and not at all safe, to run at the speed of two days. In consequence, they were allowed two days twenty hours returning; the schedules from that time to the 31st December, 1835, with small variations, were conformed to this extended time; and, instead of proving that the increased speed was not performed, prove directly the contrary; and the continuance of the pay, up to the present Postmaster General's accession to the department, shows conclusively that the understanding of the department, until that time, was conformable to the above view; and if the schedules are considered, as I suppose they are, the orders of the department, they show a conformity to this view, and of course are reconcilable to the actual performance of the services, for which I have allowed not only up to the time the present Postmaster General came into office, but afterwards, until the 31st December, 1835. The Postmaster General had the power to suspend those services after he came into office; and, aware of this, before making the award, I enquired of him, by letter of the 23d September, 1836, marked exhibit No. 17, whether he had exerted this power. He answers, "that not considering the services for which the allowances by the late Postmaster General were suspended in the account of Messrs. Stockton & Stokes, or Richard C. Stockton, on the routes from Baltimore and Washington to Wheeling, as ever legally authorized, the department has given no notification to those gentlemen to discontinue their services, other than declining to pay for them on the ground stated in the papers now before you. The third claim presented by the contractors was for

fifty per cent. in all their pay, in consequence of the increased weight of the mail. Of this claim the Postmaster General says: "To the undersigned the fifty per cent. allowance appears to have been equally without consideration, from beginning to end."

He says also, "that there is abundant proof that they (the mails) were never a load for one four-horse post coach daily." On this subject I state in my report, that "it appears to be fully proved that, in consequence of the *increased* expedition with which the mail was carried on the route from Baltimore to Wheeling, the heavy mails for the west, from the north and east, beyond Philadelphia, which had, before 1832, been carried on the route from Philadelphia to Pittsburgh, were drawn upon the route from Baltimore to Wheeling; that at the period when the contract was made, the mail from Baltimore and Washington to Wheeling averaged in weight about one hundred pounds. The fair interpretation of the contract, being the meaning entertained at the time of making it by both the contracting parties, is, that the contractors were to carry a mail, such as it was at the time of entering into the contract, with such addition thereto as should arise out of the *natural* growth of the business of the country. But in the case under consideration, there was a sudden increase from one hundred to two thousand pounds, which could not be accounted for from gradual and natural augmentation, but was attributable only to the cause above mentioned. Such an increase could not have been anticipated, and was not, therefore, in the contemplation of the parties when the contract was made. Justice required, therefore, an additional allowance of compensation for services in transmitting the mail which had thus increased in weight from ten to twenty fold.

The contractors propose to the Postmaster General, in the month of March, 1833, to make the requisite increase of their means of transportation, and apply for an additional allowance of twenty-five per cent. on their pay to cover the expenses. The Postmaster General directed that the services should be required, but suspended a decision on the compensation. Further experience taught the contractors that twenty-five per cent. increase of compensation would not cover the increased expenditure; and in the beginning of June following, they asked, instead of twenty-five per cent., for an additional allowance of fifty per cent., which was granted by the late Postmaster General from the beginning of the contract, and the necessary instructions were given to the treasurer and pay clerk.

In support of their claims, as above stated, the claimants laid before me the statement of the predecessor of the present Postmaster General, one of the documents which I sent with my report to Congress, and is marked exhibit No. 24; and the statement of his chief clerk, the Rev. O. B. Brown; and other depositions and certificates, to establish the facts above detailed, which directly contradict the statements made in the above extracts from the Postmaster General's report to you. The former is as follows, viz:

"The first suspension has reference to an allowance of fifty per cent. in their compensation for transporting the mail from Baltimore and Washington to Wheeling. This allowance was made by me about the beginning of June, 1833. The testimony which was received in relation to the weight of the mail showed that, at the time of entering into that contract, (the latter part of 1831, to commence January 1st, 1832,) the average weight of the mails was about eighty or one hundred pounds, but soon after the contract commenced it increased to more than twenty hundred pounds. About the same time the Government itself broke up a considerable proportion of the Cumberland road, preparatory to its repair, by which means it was rendered exceedingly difficult to travel with any degree of rapidity. These were circumstances unforeseen and unanticipated when the contract was made, and the change of the condition of the road was effected by the Government without the agency of the contractors. It was obvious, therefore, that a line of stages could not carry upwards of a ton weight of mail, besides seven passengers, (the number stipulated in the contract,) and travel at the required speed under any circumstances, and especially in the dilapidated state of the new road; and to divide the mail, so as to carry half of it in the slow line provided for, would produce great confusion and general discontent. The slow line had been provided for the purpose of supplying the small, intermediate offices; and to send by it any part of the great mail, would cause such part to be delayed in its progress.

"The increase of the mail was, therefore, such as to require a much greater service than was contemplated when the contract was made, or than the contract itself required; and it was obvious that the *whole* of that mail could not be transported under the contract, as it existed, without heavy losses, which must result in ruin to the contractors. It was under these circumstances, that the allowance of fifty per cent. was made to the contractors for giving such increased expedition to their slow line, and for furnishing such additional stock of horses, on both lines, as to carry the whole mail through in the time required.

"The proposition to perform this increased service, for additional compensation, was made by the contractors in the spring of 1833, when they were directed to continue the service; but the decision, as to the amount of compensation for it, was suspended till June, 1833, when fifty per cent. was allowed."

"The form observed, in making decisions in all such cases, was to write upon the outside of the file of documents relative to such cases, or upon its envelope, my decision, and send it to the superintendent of mail contracts, by whom it was communicated to the division of finance, and noted on the contract. In this case the superintendent, Maj. Hobbie, was absent, and I was about leaving the city for Kentucky, before his return; I therefore wrote my decision, as usual, on the envelope, making the allowance, and [sent] it to the treasurer of

the department, and directed him to make the payments accordingly. This was about the beginning of June, 1833. This order being given to the treasurer, he was directed to hand it to Maj. Hobbie if I did not return from Kentucky; but, in the event of my returning, then the paper was to be returned to me. It was returned; but, in the multiplicity of business connected with the department, this matter was lost sight of, and did not come before me again, until an opinion had been obtained that the accounts of the contractors were said to be overdrawn—certain credits, it appeared, were omitted. This original paper was then sought for; and being found amongst my papers, was handed to Major Hobbie."

The statement, under oath, of the Rev. O. B. Brown, at that time chief clerk, is as follows:

Stockton & Stokes entered into a contract with the General Post Office, in [the] autumn of 1831, to transport the mail between Baltimore, Washington city, via Frederick, Hagerstown, Cumberland, and Washington, Pennsylvania, to Wheeling, for four years, beginning the 1st January, 1832. When this contract was made, the fact was known that the average weight of mails did not exceed one hundred pounds on this route. With this weight, the contractors proposed to give a greater expedition to the route—which proposal was accepted. But they soon discovered that, in consequence of this increased expedition, mails which had formerly travelled westward by other routes came on this, and the weight transported rose from less than one hundred pounds to two thousand pounds and upwards; and, in consequence of these difficulties, an increase of the means of transportation also became necessary. This produced a complaint to the Postmaster General of the unexpected burdens, and compensation was asked for such increase of expenditure, &c.; the means of transportation intended and contemplated for the original weight, not being at all adequate for the transportation of the increased weight, at any thing like a rate of speed desirable to the department, and to the community. When these facts were communicated to the then Postmaster General, he directed the continuance of the service, assuring the contractors that they should be compensated for any additional and unexpected labor and expense thus thrown upon them; but not, at that time, fixing any rate of compensation, or acting officially on the subject, the contractors deferred pressing the subject of compensation, until after they ascertained what would be to them the fair average rate at which they could maintain the additional labor; and in June, 1833, they asked of the Postmaster General fifty per cent. upon their mail pay, as a fair compensation for the increased labor and expense; and this, of course, to relate to the commencement of the contract—*very* shortly after which this increased labor had begun. The Postmaster General, having made all proper inquiries, determined that, for the additional labor and expense incurred by the contractors, fifty per cent.

additional to their *to their* former mail pay should be allowed; to take effect from the beginning of this contract. The Postmaster General endorsed this order for allowance on the papers in his department, and ordered the treasurer of the Post Office to pay over the amount to the contractors; and which order the treasurer has regularly obeyed, and the contractors have received the amount of this allowance up to the appointment of the present Postmaster General.

From the close of the year 1833, sundry retrenchments were made by the Postmaster General on this and other contracts, but this allowance of fifty per cent. was never retrenched, or the service ordered to be discontinued; or, if the Postmaster General ever intended to discontinue it, he did not inform the contractors of the same, nor the treasurer of his own department; but the contractors continued to perform the service, and the treasurer of the department continued to pay them the fifty per cent. up to the close of Mr. Barry's administration of the department.

It appears that when the Postmaster General decided in favor of making this allowance, in June, 1833, and directed the treasurer of his department to pay the same, his assistant, (S. R. Hobbie, esq.,) who superintended that division of the transportation of the mail, was absent from the city, and the Postmaster General was about to absent himself; but he made the allowance in his usual form, by writing upon the envelope of the document containing the application—"The claim is just, and is allowed." And this document he left with the treasurer as his authority for paying the same, but directed him to retain it till he, the Postmaster General, should return to the seat of Government, and then to hand it to him, to be passed over to the assistant, Mr. Hobbie, for his information, as was usual in such cases.

In consequence of this accidental circumstance, it appears that the allowance was not placed to the credit of the contractors, in the books of the department, till the beginning of the current year 1835, though the payment was regularly made to them by the department. It also appears that the Postmaster General had intended to retrench this allowance at the close of 1833, and was under an impression that he had done so; but that all difficulty between him and the contractors on this point was settled, by the Postmaster General formally restoring it for the whole time, about the last of March or 1st of April, 1835.

I will spread before you no more of the testimony respecting the propriety of this allowance of fifty per cent. of the increased weight of mails, but content myself with referring to the deposition of Moore N. Falls, R. L. Barry, Richard McClure, James P. Carlton, Thos. D. Carneal, and Jacob Rhor, marked exhibits Nos. 19, 21, 25, 26, and 27.

The last point to be considered, respecting the claims arising out of contracts respecting the Baltimore, Washington, and Wheeling route, has reference to the reasonableness of the allowances made.

This, I am of opinion, is [as] clearly established as the performance of the services. The sum allowed appears to be large, but it is to be recollected that the claims established for the increased speed, and extra horses and postillions, extend through two years; and that for the fifty per cent. allowance for the transportation of [the] mail which had increased, from circumstances not in the contemplation of the parties when the contract was made, at least twenty fold, extends through four years.

The time allowed me for making this report, compels me to restrict myself to merely laying before you the deposition of one of the witnesses on this subject, and making reference to the depositions of others.

The deposition of Moore N. Falls, a gentleman known to me to be highly respectable and intelligent, is in the following words, viz:

MARYLAND, *Alleghany county, to wit:*

Before the subscriber, a justice of the peace in and for said county, personally came M. N. Falls, merchant in Cumberland, who, being duly sworn, did depose and say, that he has been doing business for the National Road Stage Company for the last five years, and has been intimately acquainted with their accounts and operations, and has attended personally to nearly all their quarterly settlements, from 1831 to the present time; that, at the time of taking the contract of 1831 and '2, the weight of the mail on this road, between Baltimore and Washington to Wheeling, did not average more than from a hundred and fifty to two hundred pounds; that, shortly after the department ordered an increase of speed on this route, the mails increased to upwards of two hundred pounds daily; that, in consequence of the increase of speed, and the great weight of mails, *that* it became necessary to put postillions, horses, and riders, at all the mountains on the road, in order to ascend the mountains with speed.

I should also have mentioned, that the company ordered that the passengers in the mail should be reduced from ten to six each way, making a difference of eight passengers each trip; and very frequently they have been obliged to turn every passenger out of the stage, in order to insure its arrival in time to save the mail. It also rendered it necessary to put on a second line at the same speed.

In consequence of this increase of speed, and a very rough road, the destruction of horses and coaches was very much increased—at least from forty to sixty per cent., and coaches three to one.

The following he considers a fair and reasonable estimation of the increased expenses and losses by said company, in consequence of the increased speed, and the greatly increased weight of mails:

1st.	For 40 to 44 postillions' horses, 20 to 22 riders, with harness, &c., per annum - -	$11,500 00
2d.	For reduction of passengers, from 10 to 6 each way, would be eight per day; but to take the average, he would think that 5 passengers a day would be about the loss: 5 passengers, at $13, for one year - - - -	23,725 00
3d.	50 per cent. increased expenses on horses, of which there are about 400, average cost about $75; after allowing 33 per cent. for the general loss on horses in staging on this route, 17 per cent. would be a low estimate for the increased loss - - - - - -	6,800 00
4th.	On account of the destruction of coaches, as before stated, 3 for 1, which is not a large allowance, when he has known as many as three coaches broken all to pieces in one trip, with the great weight of mails, which *as* has sometimes been ascertained to weigh 2,800 pounds. The average cost of coaches on the road has been about $10,000 per annum, as the books of the company will show. The increased expenses would be from $20,000 to - -	30,000 00

The deponent would further state, that the losses of the company, of which he had every opportunity of knowing, was increased at least $20,000 per annum, during nearly the whole of the last contract; that by the present contract, in which the heavy mails have been withdrawn, the company will make at least from 50 to 75 per cent. more than before.

Sworn before JNO. M. CARLTON, *J. P.*

The other deposition, relating to the equity of the award for increased weight of the mails, is marked exhibit No. 21. To the above, however, I will add a statement, made out by Lucius W. Stockton, esq., one of the contractors, calculating the amount he would have received from the United States, if he had charged them at the same rate he regularly charges individuals, and is so clearly stated, upon data *he regularly charges individuals, and is so clearly stated, upon data*, already established by incontestible proof, that every person may judge of its reasonableness for himself. It is as follows:

VIRGIL MAXCY, esq., Solicitor of the Treasury.

SIR: In order to give you some further idea of what we would be entitled to, "on principles of equity," in the settlement of our western claims now before you, we beg leave to submit the following statement, viz:

The amount of the *weight* of mail upon our western road is *is* clearly proven to have been upwards of 2,000, but say only - - - - -	lbs. 2,000
Deduct the weight when contract was taken, proven to have been 100 pounds only, but say it was -	200
Additional weight per day - - -	1,800

Under the most unfavorable calculation for us, it is a rule on our lines, and we believe on all others, to charge every passenger, or any other person *taking* or *sending* baggage, at the rate of one passenger's fare for every 150 pounds, and that, too, without being obliged to arrive at a given time or pay a fine, and also without any of the responsibilities of carrying mails. Assuming, then, that what individuals pay would be fair and proper data on which to found a claim against the Government, we proceed to show, that 1,800 pounds per day would amount to twelve passengers, as 12 times 150 make 1,800. Our stage fare from Baltimore to Wheeling, at the time of this increased weight, was $18 75 each passenger, part time $15, and part $16, &c. The average, however, would, we think, for the whole four years, be $16.

Twelve passengers per day would be, at $16 -	$182 00
Multiply by 365, the number of days in a year -	365
	910 00
	10,92
	54,6
Making the amount of dollars - - -	$66,430 00

Which Government would have to pay, in the foregoing principle, for *increased weight* alone, without any increase of speed or responsibility, or fines for failures. The amount at *this time*, (now 1836,) paid by a passenger, or other person, for baggage, from Baltimore to Wheeling, is $17 for every 150 pounds, and without responsibility to carrier, or fine for non-arrival in a specified time. We will now contrast the amount we would be equitably entitled to, with the amount allowed us by the department, for *increased speed, postillions*, and additional weight, viz:

Amount above stated - - - -		$66,430 00
Amount allowed for increased speed per annum - - - -	$6,750 00	
Postillions - - - -	9,812 00	
Increased weight - - -	19,254 00	
Total allowances for all - - - -		$35,816 00
Making a saving to [the] department per year -		$30,614 00

That, in the Government pay, $30,614 *less* than individual pay for like service. This, however, you will readily perceive is not a fair statement for us.

The following we consider the proper grounds, viz:

Amount of 1,800 pounds per day, is - - -	$66,430 00
Actual amount allowed for weight - - -	19,254 00
Annual saving to Government on the fifty per cent. claim - - - - - - -	$47,176 00

As additional evidence that the calculation of $16 per 150 pounds is moderate, we will refer you to the report of the Post Office Committees, (vide Reports Ho. Reps., report 103,) where it is shown, under oath, that from 1824 to 1828 the department paid at the rate of $59 14 for what individuals paid $18 75.

The actual cost of postillions is shown, by the evidence before you, to be, per annum - -	$11,379 13
Actual amount paid by department - - -	9,812 00
Leaving to department, or loss to contractors -	$1,567 13

The actual cost of speed is almost beyond calculation. Nothing definite or exact can be arrived at. By reference, however, to the affidavits of R. L. Barry, Moore N. Falls, and John C. Hull, which are before you in the case, and allowing that the actual cost of speed was about one half of what it is there computed, and you will, no doubt, arrive at the conclusion that the amount per annum was at least - - - - - - - $30,000 00

Amount allowed by department - - -	6,750 00
Saving to department, or loss to contractors, per annum	$23,250 00

Recapitulation.

Showing the difference between the equitable amount and the amount paid by the Post Office Department, viz:

Department allowed too little on weight per annum	$47,176 00
Do do do on postillions -	1,567 00
Do do do on speed - -	23,250 00
Total difference in favor of Government - -	$71,993 00
Or, in four years, (the contract term) - -	$287,992 00

We respectfully submit the foregoing to your consideration, in the settlement of *your* western claims.

Your obedient servants,

STOCKTON & STOKES,
L. W. STOCKTON,
DANIEL MOORE,
Per L. W. STOCKTON.

Let us conclude with another calculation, to show the reasonableness of the allowance by Mr. Barry to Messrs. Stockton & Stokes, by comparison with a contract made by the present Postmaster General with the same gentlemen.

From several remarks in his report, the Postmaster General appears to be of opinion that he has a right to load a mail coach, if there be matter enough to do so, to such an extent, as to exclude all passengers; though his predecessor, as appears from this statement, marked exhibit No. 24, construed the 7th article of the Post Office contracts as reserving the right to the contractors to carry seven passengers, and of course denying the right to the department so to overload the coach with mails as to deprive them of this privilege. Without discussing this point, though I have no doubt of the intention of both parties when the contract for carrying the mail from Washington and Baltimore to Wheeling was entered into, let us now calculate the cost to the Government of carrying the mail on that route in one four-horse post coach, or mail wagon, without passengers, which the Postmaster General says was sufficient for transporting all the heavy mail matter that was thrown upon the route from 1831 to the end of 1835. The department is now under contract with Messrs. Stockton & Stokes, to pay them $12,000 per annum for carrying the mail between Washington and Baltimore, thirty-eight miles, in a mail wagon, without passengers. It will not be contended that the mails on this route are heavier than they were on the route to Wheeling in the years 1832, 1833, 1834, and 1835. Deduct, then, for the light afternoon mail between Baltimore and Washington, which can be carried in a sulkey, $2,000 per annum, though Messrs. Stockton and Stokes have a contract with the railroad company to carry it for them for $600 per annum, and $10,000 per annum will be left for the four-horse mail wagon. The distance from Baltimore to Wheeling is 268, and from Washington to Frederick 34, miles—making, altogether, 311 miles to be traveled daily. Allowing them $10,000 per annum for the four-horse mail wagon, without passengers, from Washington to Baltimore, 38 miles, and allow for a four-horse wagon for 311 miles, at the same rate, and the expense per annum will be $81,842, being $24,030 per annum more than all the allowances to Stockton and Stokes, (which were, altogether, $57,812 per annum,) made by Mr. Barry for the Wheeling route, and for the four years of their contract $96,120.

To the foregoing I will add the first award at large as made by me, and transmitted to the Postmaster General on the 12th November, 1836.

OFFICE OF THE SOLICITOR OF THE TREASURY,
November 12, 1836.

SIR: In obedience to, and in pursuance of, the authority of an act of Congress, of the 2d July, 1836, entitled "An act for the relief of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore," by which the Solicitor of the Treasury is authorized and directed to settle and adjust the claims of these gentlemen for extra services performed by them as contractors for carrying the mail under and by virtue of certain contracts therefor, by them alleged to have been made and entered into with them by William T. Barry, late Postmaster General of the United States, and for this purpose to inquire into and determine the equity of the claims, or any of them, for or on account of any contracts, or additional contracts, with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make such allowances therefor as, upon a full examination of all the evidence, may seem right according to the principles of equity," I have had under consideration the claims of the said Richard C. Stockton, under the contract made on the 15th October, 1831, between said Stockton, and William Neil, of Columbus, Ohio, and the late Postmaster General, for the transportation of the mail on sundry routes, so far as relates to the carrying thereof on routes 1,201, 1,389, and 1,390, and his, the said Stockton's, claims under the contracts additional thereto, alleged to have been entered into with the late Postmaster General. These claims, as made by Mr. Stockton, are as follows, to wit:

1st. For increased speed on said routes, from the 1st January, 1834, to the 31st December, 1835, according to the rate allowed at the Post Office Department, and paid for from the 1st January, 1832, to the 31st December, 1833, that is $1,687 50 per quarter, amounting to - - - - - -	$13,500 00
2d. For extra horses and postillions on the route from Baltimore to Wheeling, from the 1st of January, 1834, to the 31st of December, 1835, according to the rate allowed and paid for during the previous years, that is $2,453 per quarter, amounting to -	19,524 00
3d. For increased weight of mails, 50 per centum of $38,508, the amount of all the payments and allowances together, for services on the route from Baltimore to Wheeling, from 1st of January, 1832, till 31st December, 1835, being four years, at the rate of $19,254 per annum, or sixteen quarters, at $4,813 50 per quarter, amounting to - - - -	77,016 00
4th. For interest upon such sums due from the Post Office Department, the pay of which has been suspended	

I have made a full examination of all the evidence touching the above mentioned claims, and considered, as well that which has been communicated by the Post Office Department, and the Secretary of the Senate, as that received from the claimants, and collected by depositions, and obtained from public documents, and have decided that there are equitably due to said Richard C. Stockton, on account of said claims, the following sums of money, viz:

For part of the first mentioned claim for extra services, that is for five quarters, commencing with the 1st January, 1834, and ending on the 31st March, 1835, at the rate of $1,687 50 per quarter, the sum of - - - - - - -	$8,437 00
For part of the second claim above mentioned, that is for five quarters, commencing with the 31st of January, 1834, and ending on the 31st of March, 1835, at the rate of $2,453 per quarter, amounting to - - - - - - -	12,265 00
For part of the third claim above mentioned, on account of increased weight of mails, that is 50 per cent. on all payments and allowances for thirteen quarters, commencing with the 1st of January, 1832, and ending on the 31st of March, 1835, at the rate of $4,813 50 per quarter, amounting to the sum of - - - - - - -	62,576 50
Making together, up to the 1st of April, 1835, when the pay of said Stockton was suspended by the present Postmaster General, the total sum of -	83,278 00
I have also decided, that there is equitably due to the said R. C. Stockton, on account of all the above claims for extra services for the 2d, 3d, and 4th quarters of the year 1835, commencing with the 1st of April, and ending with the 31st December, 1835, the further sum (at the rate of $6,715 50 per quarter) of - - - - - -	26,862 00

I, therefore, in pursuance of the authority conferred on me, by the aforesaid act of Congress, make allowance to said Richard C. Stockton, for the said claims, up to the 1st of April, 1835, of the above sum of eighty-three thousand two hundred and seventy-eight dollars.

And I also, by the same authority, make allowance to said Stockton, for his said claims for extra services, from the 1st of April, to the 31st December, 1835, of the said sum of twenty-six thousand eight hundred and sixty-two dollars.

A claim for interest having been made, I have postponed the consideration of it, until the equity of the other claims of the gentle-

men named in the title of the act shall have been inquired into and determined.

I have the honor, &c.

(Signed) VIRGIL MAXCY,
Solicitor of the Treasury.

To the honorable AMOS KENDALL,
Postmaster General United States.

I have now, sir, gone through with the items of my first award, and proceed to the second.

The first claim presented by the contractors, and allowed by me in my second award, consisting of two items, was for the transportation of an additional daily mail from the city of Washington and Baltimore to Philadelphia, by land conveyance for 90 days during the winter of 1833–'4, requiring 30 teams, of 4 horses each, at $6 per day for each team - - - - - - -	$16,200 00
And for the same, during the winter of 1834–'5, for 100 days, at the same rate - - - -	18,000 00
	$34,200 00

The only question on these claims was, whether the line for which pay is claimed was an additional line to those stipulated for in a present contract or not.

The Postmaster General goes into a long argument to show that there were several lines stipulated for in the original contract, some of which were run only a part of the time, and some not at all, but that all were paid for; and then says, "It would seem that, in an equitable adjustment of these claims, the services paid for, and not performed, should be taken into the account." But, because they were not, he adds:

"The solicitor seems to have overlooked the just claims of the public, and instead of deducting any thing for the very great services paid for, but not performed, he added, in his equitable settlement, $1,800 to the allowances made by the former Postmaster General."

The answer to all these remarks is very short. The Postmaster General has forgotten that, according to his own position, I have no jurisdiction over any claims which have not been suspended by him, and that he has exhibited to me no proof of his having suspended *by him, and that he has exhibited to me no proof of his having suspended* from the credit of the contractors, any account of the pay received by them, which he now thinks I ought to have deducted from the claim under consideration.

In answer to his long dissertation, to show that the claim in question was not for an additional service to those stipulated for in the contract, I shall content myself with extracting from my report to Congress my remarks on this subject. In that report, I say:

"It is known, as a part of the history of the times, that, in the winter of 1832–'3, the editors of sundry newspapers in New York united in the establishment of an express between Philadelphia and New York, which out-traveled the United States mail. This circumstance bringing reproach upon the Post Office Department, it was determined by it to employ Mr. Green, postmaster of Boston, and Mr. Bates, assistant postmaster of New York, to arrange a plan, if practicable, for a fast mail between Washington and Portland, which they accordingly did; and Richard C. Stockton, by a proposal to the Post Office Department, bearing date the 11th March, 1833, and marked exhibit No. 34, engaged to carry it between Washington and Philadelphia in 20 hours. This proposal was accepted by the late Postmaster General, but for want of the necessary data for calculating the expense, ten thousand dollars were advanced towards it, and the amount of ultimate compensation was postponed for future consideration, when an experiment should furnish them.

At the time of making this proposal for carrying the fast mail, Mr. Stockton was carrying the mail at a different speed on the same route, under a contract with the department, bearing date the 15th October, 1831, and marked exhibit No. 36. There seems to be no dispute about the service, which is the object of the present inquiry, being performed, nor of its being performed well. But a question was raised whether, under the above mentioned contract, the contractors were bound to carry two daily mails between Baltimore and Philadelphia, in the winter season, or not. If they were, then they would be entitled to a compensation, as it regards the fast mail—not for a new line—but for an improvement of speed only, in one of their daily lines. If they were not bound to keep up two daily lines, this was an entirely separate and distinct service, not stipulated for in the contract of October 15th, 1831, but only in the proposal of 11th March, 1833.

The testimony of Mr. Barry, in his statement marked exhibit No. 24, and of O. B. Brown, in his letter of 10th January, 1835, to Messrs. Stockton and Stokes, marked exhibit No. 35, leave no doubt that the distinct understanding between the department and the contractors, in the undertaking to carry the fast mail, in the winter of 1833–'4, and 1834–'5, between Washington and Philadelphia, was a separate and distinct service from that stipulated in the contract of October 15, 1831, and, therefore, entitled to the full compensation for the duty performed, and not a mere additional or extra compensation for an increase of speed on an established line. If any further document were necessary to sustain this position beyond all controversy, that document is supplied in the clear, able, and conclusive opinion and argument of Roger B. Taney, now chief

justice of the United States, marked exhibit No. 37, in which the late Postmaster General, in his statement above cited, says, that this opinion was in perfect coincidence with his. He accordingly allowed for the service in the winter of 1833–'4, the sum of $11,740 for the route between Baltimore and Philadelphia, and $4,640 between Washington and *and* Baltimore—making, together, the sum of $16,200, being at the rate of $6 per day, for each of 30 teams of 4 horses each, which was the number the service required, for 90 days, which was the length of service in that winter. He also allowed the same sum, for the like services, in the winter of 1834–'5.

The fact being established, that the subject of the present inquiry was a service in pursuance of a contract with the late Postmaster General, and the fact of the payment under that contract being suspended by the present Postmaster General being apparent from the account rendered by the Post Office Department, marked exhibit No. 31, it remains to inquire what allowance for the service is right, according to the principles of equity.

It is proved by the deposition of Alexander M. Cumming, at the time general agent of the line of Messrs. Stockton & Stokes between Baltimore and Philadelphia, and of Messrs. Malta and Scott, clerks in their office at Baltimore, marked exhibits Nos. 39 and 40, that thirty teams, of four horses each, were employed in the transportation of the *fast mail* in question, between Washington and Philadelphia, and that the service continued in the winter of 1833, –'4, for ninety days, and in 1834–'5, one hundred days.

It is proved, by the depositions of Charles Goddard, N. B. Woodward, Hugh Cunningham, A. M. Cumming, and Alexander Scott, marked exhibits Nos. 41, 42, 43, and 44, that $6 per diem for each team, especially when is taken into consideration the great destruction of stock from high speed, bad roads, and bad weather, is a reasonable rate of charge. Applying this rate of charge to the service rendered for ninety days in 1833–'4, and the amount will be $16,200, which Mr. Barry allowed. It appears that the same sum was allowed for the service performed in the winter of 1834–'5; and, in directing the payment of it, he says to Mr. Suter, the pay clerk: "Allow the credit for sixteen thousand two hundred dollars, in conformity with the principle of the former decision, agreeably to the opinion of Mr. Taney." This shows that his intention was to allow the same rate for the service of 1834–'5 as he had done for that of 1833–'4, as the service in the year 1834–'5 continued ten days longer than in 1833–'4. Justice requires, if $6 per diem for each team be a reasonable allowance, which, I think, is abundantly established by the above deposition, that $1,800 should be added to the amount allowed for 1833–'4, making it $18,000, which I have accordingly awarded. It is presumed that Mr. Barry had not the testimony as to the number of days' service before him, or, as he adopted the principle of the first decision, made a mistake through some inadvertence.

The next claim allowed in my second award, to which the Postmaster General objects, is an account sent by the Post Office Department to this office. The first item, $1,240, is for one month's extra service in the spring of 1831. This item was allowed by Mr. Barry in another account, marked exhibit No. 46, all the items of which were allowed by him. The objection to my allowance of this item is, not that it is unfounded or exorbitant, but that I have no jurisdiction, because it arose under a contract with the Hon. John McLean, on which there is no pretence that the contractors' pay has been suspended.

The last position, that the payment of this claim has not been suspended, is not correct; for a reference to the last class of suspensions, in the account of the department with the contractors, will show that the amount is the same as that of the account sent me from the Post Office Department, of which the first item is this sum of $1,240, and which is herewith sent, marked, as above, exhibit No. 46. And if it arose under a contract with Mr. McLean, and not with Mr. Barry, I have to remark, that the proof of that fact, as there was nothing on the face of the account to show it, ought to have been sent to this office, which was not done; and, in its absence, I had a right to suppose, as I had called upon the Postmaster General for the documents which related to the matters submitted to me by the act of July 2, 1836, that the papers sent did not relate to any thing but what was within my jurisdiction. But suppose the contract was originally made with Mr. McLean, yet still, as Mr. Barry allowed the claim, that act may, without any great stretch of construction, be considered an adoption of the contract by him. As the justice of this item is not disputed, I shall not trouble you with the view presented in my report to show it.

The principal items, however, in this account, are said not to be under my jurisdiction, because they are for *special* services, and not for services under a *contract* with the late Postmaster General; aad a part of them are said not to be under my jurisdiction, because they were not suspended by the present Postmaster General, but by his predecessor. As to this last assertion, there was no proof sent to my office. That these services were rendered under a contract with Mr. Barry, I make the following extract from my report to Congress to show:

"The principal items of the account consist of charges for running two coaches instead of one, to transport the whole of the great mail between Baltimore and Washington, it being too large to be carried in one coach. These items make up by far the greater part of the sum of $6,423 46, which is the last amount suspended in the general account with R. C. Stockton." See exhibit No. 31. Of these, the late Postmaster General makes the following remarks: "The last case of suspension is, that of allowance for double lines of stages from Baltimore to Washington, on special occasions, when

the mails which arrived at Baltimore by steamboat for Washington were too large and heavy to be brought on by one line of stages. There was nothing in this contract which required them to run a double line at any time. They were required, whenever it should be ordered, to carry three mails a day between the two cities, as they were, for the accommodation of passengers, running lines of stages at three different hours of the day; but to run two lines, at the same hour, for the purpose of bringing the entire mail, *was what they were not bound to do*, and what could not be done without expense to them, which their contract did not compel them to incur. When it was found that the mail was sometimes too great to be carried in one line, (a circumstance which had never before occurred, and which was not contemplated when the contract was made,) the contractors proposed to leave a part of it till the next line in order should run. This they were prohibited from doing, but directed to bring the entire mail at once and without delay, whatever force it might require, or whatever number of lines it might employ. This order they obeyed; and on such occasions, it appeared reasonable to make the allowance. Such allowance had been made and paid to them prior to the last decision; and the last decision was not for a new allowance, the *principle having been already settled*, but it was rather an approval of the testimony upon which the performance of the service had been established." See exhibit No. 24.

"In the statement preceding Mr. Glenn's argument, which was sworn to by the Rev. O. B. Brown, it is said that Messrs. Stockton & Stokes were contractors for carrying the mail from Baltimore to Washington city. It sometimes happened that the mail, which arrived by steamboat at Baltimore from Philadelphia, was so large and heavy that one line of stages could not carry the whole of it to Washington, and the contractors proposed, in such cases, to leave a part of it till their next line in order should run, as their contract bound them to carry the mail three times a day, when the Postmaster General should require it, but it did not require them to run two lines of stages at one and the same time. They were prohibited, however, by the department, from ever leaving any part of the mail, but were required to carry it all at the same time, though it might require more than one line of stages to do so. With this requisition they complied, and claimed compensation for the additional line of stages in such special cases. The Postmaster General, about three or four years since, allowed their claim and made the payment. The contractors continued to perform the same service, whenever the weight of the mail was such as to require it, expecting, of course, the same allowance to have been made, the principle having already been settled by the Postmaster General; and their drafts on the department, which were accepted and paid, were based upon the conviction that these allowances could not be withheld. But they were not formally admitted by the Postmaster

General till the spring of the present year, (1835,) when he decided to make the allowance. In this, as in all the preceding cases, (meaning the extra allowances considered in the previous part of this report,) the payments have actually been made." See the account of the Post Office Department with Richard C. Stockton, marked exhibit No. 31.

This account, which the late Postmaster General directed to be passed to the credit of Stockton & Stokes, amounts to $6,423 46, which amount has been suspended from their credit by the present Postmaster General. The same items which make up this amount are embraced in the account containing the class of claims now under consideration. But this latter account contains a considerable number of additional and subsequent charges for extra trips from Baltimore to Washington, of the same kind as those allowed for by Mr. Barry in exhibit No. 46, and which I consider as performed under a standing contract with the late Postmaster General, whenever the mail delivered by the steamboat from Philadelphia, at Baltimore, should be too large to be carried in one stage, and, therefore, entitled to an award from me, if the amount charged be a reasonable and equitable compensation for the service actually performed. That the services were performed, is proved by the affidavit of Alexander M. Cumming, marked exhibit No. 50; and that the charge, per trip, of $20 is reasonable, is established by the depositions of Dennis A. Smith and David Barnum, two experienced mail contractors, marked exhibit No. 51. For the reasonableness of the amount of the allowance in my last award, I beg leave to refer to documents marked exhibits Nos. 46, 50, and 51.

The last claim which the Postmaster General disputes my authority to allow, is that for interest, on the ground: 1st, that an authority to settle a claim on equitable principles does not confer authority to allow *allow* interest on such claims, unless specially granted; and, 2dly, because the solicitor has not allowed interest on the claims he has acted on, but "upon current pay withheld, with which he had nothing to do."

Whether the rule, as above stated, is well established in the Treasury Department or not, in ordinary cases, I do not conceive it to be applicable under an act so broad as that under which my awards were made.

The act directs me to inquire into and determine the equity of the claims of the contractors on account of contracts with the late Postmaster General, and to make such allowances therefor as, upon a full examination of all the evidence, may seem right and proper, according to the principles of equity; and as it would be just, between individuals in such a case, that interest should be paid, I hold it would be equally so between individuals and the Government. In justice, interest ought to be paid, and the calculation of interest, in the manner I have made it, was only a mode of arriving at an equitable result as to the damage the contractors had sus-

tained in addition to the principal sum due for their extra services. To these observations I beg leave to add the view I have taken of this point in my report to Congress, which is as follows:

"It is true, as a general [rule,] that the United States do not pay interest upon sums due to individuals, though in many cases they demand it. This rule is not based upon any idea of there being one rule of justice for the Government and another for the citizen. It is founded upon the idea that the Government is always ready to pay its debts, and if those having claims against it do not present them duly authenticated for payment, it is owing to their own negligence that they do not receive their money. They are therefore not allowed interest. But when the Government has detained the money and refused to pay it, justice requires, upon its being ascertained afterwards that it was justly due, that the Government should do to its creditors what it, when creditor, requires of its debtors, and pay interest upon the money thus due for the time it has been retained.

"Though this general principle may be readily admitted, yet there was some difficulty at first in deciding upon the manner in which it ought to be applied in the equitable settlement of the claims in question.

"The present Postmaster General had decided that certain large allowances made to the claimants by his predecessor were authorized by law; and, as their amount had already been paid up to the first of April, 1835, he considers it an over-payment, and retains afterwards in hand all the current pay of the contractors which was allowed to be legal, as it became due at the end of each quarter, until the sums thus claimed to be over-payments were reimbursed to the department.

"Congress, to whom the contractors petitioned for relief, passing by the question whether the allowances made by Mr. Barry were authorized by previous enactments or not, direct that their accounts, the United States having received the benefit of their services, should *should* be settled on principles of equity, and referred the matter to the Solicitor of the Treasury.

"That officer, on the proof laid before him, decides, with some small variations, that the allowances made by the late Postmaster General were no more than a just and equitable remuneration for the services rendered. The contractors had received their money, but were compelled to refund it in the manner above stated; and they presented a statement, marked exhibit No. 52, of sums of interest which they were compelled to pay to sustain themselves after the suspension of their regular dues, which statement is proved by the oath of their head clerk, A. Malter. If the controversy had been between two individuals, under the same circumstances, what would a court acting on the principles of equity and sound morality decree? It is believed that but one answer can be made—the return of the several sums retained, with interest from the time of retention."

Believing that the spirit and letter, indeed, of the act required the adoption of the same rule, I have, after mature consideration, awarded interest on the several quarterly sums retained by order of the department, from the time they respectively fell due until the date of the award. The whole amount of the sums of interest thus awarded was $6,501 59 to Richard C. Stockton, and $392 34 to Lucius W. Stockton. See account of the quarterly pay of the contractors, marked exhibit No. 53, and the award of November 23d, 1836. The latter document, sent to the Postmaster General on the 28th November, 1836, is subjoined for your further information.

OFFICE OF THE SOLICITOR OF THE TREASURY,
November 23, 1836.

SIR: In obedience to, and in pursuance of, the authority of an act of Congress of the 2d July, 1836, entitled "An act for the relief of Wm. B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore," by which the Solicitor of the Treasury is authorized and directed to settle and adjust the claims of these gentlemen for extra services performed by them as contractors for carrying the mail under and by virtue of certain contracts therefor, by them alleged to have been made and entered into with them by William T. Barry, late Postmaster General of the United States, and for this purpose to inquire into and determine the equity of the claims, or any of them, for or on account of any contracts or additional contracts with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make such allowances therefor as, upon a full examination of all the evidence, may seem right, according to the principles of equity," I have had under consideration the claims of Richard C. Stockton, under a contract of William T. Barry, late Postmaster General, with said Stockton, in pursuance of a proposition of the latter, bearing date the 11th March, 1833, for the transportation of the fast mail between Washington and Philadelphia, on which contract his pay has been suspended by the present Postmaster General.

These claims, as made by Mr. Stockton, are as follows, to wit:

1st. For an additional daily mail from Washington city, via Baltimore, to Philadelphia, by land conveyance, for ninety days, during the winter of 1833–'4, requiring thirty teams of four horses each, at $6 per team - - - - - -	$16,200 00
2d. For like services, being for 100 days' service, during the winter of 1834–'5, 30 teams, at $6 per diem	18,000 00
Making, together, the sum of -	34,200 00

I have made a full examination of all the evidence touching the above mentioned claims, and considered, as well that which has been communicated by the Post Office Department, and obtained from public documents, as that received from the plaintiffs, and have decided that there is equitably due to the said Richard C. Stockton, on account of said claims, the sum of $34,200; and, therefore, in pursuance of the authority conferred on me by the aforementioned act of Congress, I do make allowance therefor to said Richard C. Stockton, of the sum of thirty-four thousand two hundred dollars.

I have also had under consideration sundry other claims of the said Richard C. Stockton, as follows, to wit:

No. 1. For compensation for carrying the mail between Baltimore and Philadelphia for one month, during the spring of 1831, after the steamboats, in which the mail by Congress was to have been carried, had begun to run -	$1,240 00
2. For compensation for mail guards for the above period, in 1831 - - - -	458 33
3. Also for one month in the spring of 1832 -	458 33
4. For furnishing arms and ammunition for 1831-'2	76 50
5. For amount paid for boat in Philadelphia, and for expenses at Havre-de-Grace - -	170 00
6. For going round by Port Deposite when the river Susquehanna was impassable - -	294 00
7. For running second coach with double mail from Baltimore to Washington, when the mails were too heavy for one coach, 39 times, during the winter of 1831, at $20 each -	780 00
8. For the same service, 36 times, during the quarter ending on the 30th June, 1832, at $20 each trip - - - - -	720 00
9. For the same service, 46 times, at $20 per each trip, in the quarter ending Sept. 30th, 1832 -	920 00
10. For same service, 41 times, at $20 per trip, in quarter ending 31st December, 1832 - -	820 00
11. For same, 39 times, at $20 per trip, in quarter ending 31st March, 1833 - - -	780 00
12. For same, 49 times, at $20 per trip, in quarter ending 30th June, 1833 - - -	980 00
13. For same, 54 times, at $20 per trip, in quarter ending 30th September, 1833 - -	1,080 00
14. For same, 35 times, at $20 per trip, in quarter ending 31st December, 1833 - - -	700 00
15. For same, 5 times, at $20 per trip, in quarter ending 31st March, 1834 - - -	100 00

16. For same, 34 times, at $20 per trip, in quarter ending 30th June, 1834 - - -	$680 00
17. For same, 34 times, at $20 per trip, in quarter ending 30th September, 1834 - -	680 00
18. For same, 29 times, at $20 per trip, in quarter ending 31st December, 1834 - - -	580 00
19. For same, 14 times, at $20 per trip, in quarter ending 31st March, 1835 - - -	280 00
	$11,797 16

I have examined the evidence touching the above mentioned claims, as well that which has been communicated by the Post Office Department, and obtained from public documents, as that which has been laid before me by the claimants. The above claims I have decided to be equitable and just, with the exception of the one marked No. 6, amounting to $294, and do make allowance therefor, to said Richard C. Stockton, of the sum of eleven thousand five hundred and three dollars and sixteen cents.

I informed you in my letter of the 12th instant that a claim had been made for interest; the Post Office Department having decided that the additional contracts, under which Mr. Barry had made sundry allowances, were unauthorized by law, and, as a consequence, that the payment of such allowances were over-payments, determined to withhold from the persons named in the act of 2d July last the sums admitted to be due them quarterly, after the 1st of April, 1835, under their regular contracts, in order to reimburse the sums thus overpaid.

Having, in pursuance of the authority conferred on me by said act, decided in favor of the equity of those allowances, it follows, as an incident to them, that interest is equitably due on the sums withheld by the department from the several periods at which they became payable.

I have, therefore, decided that interest is equitably due to Richard C. Stockton in the following sums, which appear from the account transmitted from your department, purporting to be the amount of payments to R. C. Stockton, on account of transporting the mail on certain roads therein named, from the 1st of April, 1835, to 1st July, 1836, after deducting therefrom the sum of $6,375 96, which was overpaid by the department on the 1st April, 1835, that is to say:

1st. On the current pay under Stockton's contracts for the 2d quarter of 1835, amounting to -	$24,149 21
After deducting therefrom the balance overpaid to him on the 1st April, 1835 - -	6,375 96
Making -	17,793 25
From the 1st August, 1835, to the 12th November, 1836, being for one year, 3 months, and 12 days, amounting to - - - -	1,367 94
2d. On same, for 3d quarter of 1835, amounting to $23,594 72, from 1st November, 1835, to 12th November, 1836, being for 1 year 12 days -	1,462 22
3d. On same, for the 4th quarter of 1835, amounting to $23,487 60, from 1st February to 12th November, 1836, being for nine months and twelve days - - - - - -	1,103 27
4th. On same, for 1st quarter of 1836, amounting to $18,458 72, from 1st May to 12th November, 1836, being for six months and 12 days - - - - - -	590 17
5th. On same, for the 2d quarter of 1836, amounting to $18,458 72, from 1st August to 12th November, 1836, being for the 3 months and 12 days - - - - - -	313 29
Making the whole amount of interest due R. C. Stockton on current quarterly pay admitted by department - - - -	$4,826 89

Having decided in favor of the equity of the allowances made by your predecessor, under contract made by him with Richard C. Stockton, for transportation of the mail on the routes from Baltimore and Washington to Wheeling, I think it right, according to the principles of equity, to allow him interest, upon the sums so decided to be due, from the several quarterly periods when they became respectively payable, that is to say:

1st. On the sum of $8,954, that became payable for 3d quarter of 1835, on the 1st of August of that year, from that time to the 12th November, 1836, being one [year], 3 months and 12 days - - - - -	$689 21
2d. On the same amount, that became payable for the 3d quarter of 1835, on the 1st November of that year, from that time to the 12th Nober, 1836, being for one year and 12 days -	554 90
3d. On the same amount, that became payable for the 4th quarter of 1835, on the 1st February, 1836, from that time to the 12th November, 1836, being for nine months and 12 days -	420 59
Amounting to the aggregate sum -	$1,664 70

A claim for interest on his current pay, suspended by the department, has also been presented by Lucius W. Stockton, as follows:

1st. On $3,481 62, the amount due him on contracts with William T. Barry, upon the 1st April, 1835, from the 1st May, 1835, to 20th October, 1836, when principal was paid, being one year, five months, and twenty days -	$307 38
2d. On $496 87, being current pay for 2d quarter of 1835, which became due on the 1st August, 1835, from 1st August, 1835, to 20th October, 1836, being one year, 2 months, and 20 days - - - - -	36 41
3d. On $478, being current pay for 3d quarter of 1835, which became due on the 1st November, 1835, to the 20th October, 1836, being 11 months and 20 days - - -	27 86
4th. On 478, being current pay for 4th quarter of 1835, which became due February 1st, 1836, from that day to 20th October, 1836, being 8 months and 20 days - - -	20 69
Making a total amount of interest due Lucius W. Stockton of - - - -	$392 34

I have examined the evidence touching the above mentioned claims of interest, and have decided that they are equitable and

just, and do, therefore, make allowance therefor to the said Richard C. Stockton of the sum of four thousand eight hundred and thirty-six dollars and eighty-nine cents upon current pay withheld; and the sum of one thousand six hundred and sixty-four dollars and seventy-seven cents, upon the pay withheld upon the claims for allowances for extra services on the routes between Baltimore and Washington, from the 1st April, 1835, to the 31st December, 1835.

I have also examined the evidence touching the claims of said Lucius W. Stockton for interest, and have decided that it is equitable and just, and do, therefore, make him an allowance therefor of three hundred and ninety-two dollars and thirty-four cents.

I have the honor to be, sir, with great respect, your obd't serv't,

(Signed,) V. MAXCY,

Solicitor of the Treasury.

To the Hon. A. KENDALL,

Postmaster General U. States.

NOTE.—On a revision of the foregoing awards, with a view to prepare a report for Congress, I discovered that error had been committed in one of them, in admitting to allowance four of the items of the account of the contractors, on the 2d page of his letter to the Postmaster General, who has been requested to cause the necessary correction to be made in it, by deducting $1,163 16, the amount of these items, from $11,503 16, the amount of the award as transmitted to the Postmaster General, thereby making the award correspond with my report to Congress.

I have now, sir, finished the defence I felt bound to make of the award which has been so unsparingly denounced to you by the Postmaster General. I trust you will excuse my having occupied more time than you desired; for, as there was no part of that award left unassailed, I was obliged not only to go over the whole ground occupied by my report to Congress, and show the reasons on which I had acted, which has been carefully kept out of your view, but also to expose the erroneous statement, the fallacious arguments, and the unjust and distorted representations contained in the report of the Postmaster General. In my reply, I have not imitated the course, adopted by him, of making assertions without proof, but endeavored, and I trust successfully, to place beside my statement of facts the evidence which convinced my own understanding, and which I confidently believe will satisfy all impartial minds.

I was well aware of the prejudice which attached to all allowances made by the late Postmaster General upon the claims which it has been my unpleasant duty to adjudicate; and while the act imposing it was in its passage through Congress, I endeavored to get a change of the arbiter they had selected. I partook myself of that prejudice, but I had, nevertheless, too much general knowledge of the nature of the claims, to be able to hide from myself the probability that I should be involved in the undesirable conflict

with the Postmaster General which has been forced upon me. My efforts to avoid the responsible task ultimately assigned me were, however, unavailing, and Congress chose to clothe me with the authority of an arbiter between that officer and the claimants.

On assuming the judicial functions thus imposed, I was not insensible to the delicacy, responsibility, and danger of my situation; and in executing the duty of deciding between the claimants and the powerful head of a department, I endeavored to purge my mind of all prejudice against the claims of the former, and of all apprehensions of consequences from the latter—the last, a sentiment that might well be inspired, had I been of a timid temper, by the frequent intimation received in the midst of my task, and contained in the Postmaster General's letter, in which he says, "I informed you that the department was not aware, by any evidence furnished to it, that those services were continued from the 1st of April to December 31st, 1815. *This, from a department which claims to understand its own business, was considered by me tantamount to a direct assertion that the services were not performed. What was my surprise, then, to find on my table the next morning your award of allowances for the services.*"

Notwithstanding this menacing intimation, made for the purpose of inducing me to allow the negative assertion of the Postmaster General to countervail the affirmative depositions of unimpeached witnesses, I have, under the high obligation of my official oath, discharged my duty firmly and impartially, and fearlessly court the severest scrutiny of the Senate, to which you intimated your intention to send the Postmaster General's report, and this reply. On this reply, and my report to Congress, I am willing to rest my reputation for a proper discharge of official duty and fidelity to the interest of the country—an interest which, when well understood, can never be consistent with the denial of justice to its citizens—and to stand or fall as a public officer before any tribunal which will have the patience to make a thorough investigation.

I cannot close this communication without adverting to the manner in which the controversy between the Postmaster General and myself has been conducted.

When I was apprised, by his letter of the 24th September, that he was of opinion I had no jurisdiction of a part of the claims which it had been my duty to consider and adjudicate, and that he also denied the performance of the services for which compensation had been allowed, and declined carrying into effect my first award, I referred him to the words of the act from which I derived my authority, and made a few remarks in explanation of my construction of it; and supposing, from its denial of the service of the claimants, that he had omitted to communicate to this office all the proofs in his department, I unhesitatingly withdrew the award, and asked him for such additional proofs, if he had them, as would rebut the

evidence of services exhibited by the contractors. With an answer, dated September 29th, 1836, marked exhibit C, and heretofore referred to, he sent me sundry schedules and other documents. In a few days after, and in order that he might judge what other testimony would be necessary, I sent him, as soon as I ascertained his willingness to inspect them, all the proofs which had been laid by the claimants before me, together with the Attorney General's opinion confirming my jurisdiction.

In a few days afterwards I received another long letter, marked F, bearing date the 8th November, 1836, in which he attempted to prove, from a variety of schedules and letters, that the services in question had never been performed.

Believing that these schedules confirmed, instead of rebutting, the proofs exhibited by the complainants, as heretofore shown, I returned my first award in their favor, altered only in form, in order to separate the decision in favor of that part of the claim for services performed before the 1st of April, 1835, over which the Postmaster General admitted my jurisdiction, from that part over which he denied it.

In the report which was made to Congress, in compliance with the injunctions of the law under which I acted, I made no allusion to the controversy which had arisen between the Postmaster General and myself. I did not think it right or proper to refer to the course he had pursued; it was for him or the claimants, and not myself, to make known to Congress his refusal to comply with the injunctions of the law. If I did not lay before that body, to which he, as well as myself, is accountable, the correspondence which had passed between us, it was not on my own account that I omitted to do it. Though in nowise amenable to the Postmaster General for my decisions, I thought it right that he should be informed of the reasons I had assigned for them, and, in a spirit of courtesy, sent him a copy of my report to Congress.

This example of open and frank conduct has not been imitated by the Postmaster General. On the contrary, he has made a long report to you, under whom I hold my commission, denouncing my decisions as contrary to law and entirely unsupported by facts; and, instead of communicating to me a copy of his report, did not even notify me that he had made one, and it is to your justice alone I am indebted for an opportunity of knowing its contents and making a reply.

I am aware, sir, of my high responsibility in speaking under an indignant sense of injury and injustice, with the freedom required by truth, of the conduct of one who is honored with a seat in your cabinet council; but I feel that I am addressing a chief magistrate who will hold with untrembling hand the scales of justice, without respect to official rank, as well to a man of honor and a gentleman

whose known abhorrence of secret accusation is a guarantee that he will pardon the warmth with which I repelled it.

With sentiments of great respect, I have the honor to be, sir,
Your most faithful and obedient servant,
V. MAXCY,
Solicitor of the Treasury.

Exhibit K, referred to [in] plaintiffs' petition, p. 10.

Exhibit K.—Postmaster General's letter to the President [of the] United States.

POST OFFICE DEPARTMENT,
February 13th, 1837.

To the PRESIDENT OF THE UNITED STATES:

SIR: The undersigned has read the letter of the Solicitor of the Treasury, commenting on his report in the case of Messrs. Stockton & Stokes, and begs leave to add a few observations.

The undersigned is not aware of using in his report an expression towards the Solicitor of the Treasury which is personally disrespectful; but of his public acts he has spoken with the freedom which public duty seemed to require. If such a discussion cannot be borne with good temper, it is much to be regretted—and the more so because it cannot be avoided. You will remember, sir, that it was with the consent and approbation of the undersigned, that this report was submitted to the perusal of the solicitor. No further notice of his seems necessary, nor is it necessary to explain the imaginary menace which it is idly attempted to extract from language which obviously bears no such meaning. The solicitor's courtesy in sending a copy of his reasons is acknowledged, but it would have been more highly appreciated, because more useful, on a previous occasion.

The statement of the report in relation to the manner in which the opinion of the Attorney General was procured, is made by the solicitor a subject of comment. That opinion appears to have been applied for on the 12th October. The controversy had arisen on the 24th September, and, on the 28th, the undersigned informed the solicitor that, with the views then entertained of the law, he could pay nothing upon the award beyond the claims actually suspended in the department. On the 30th September, the solicitor asked a return of the award, and on the 1st October it was returned accordingly.

The solicitor admits that he concealed from the Attorney General the fact that a practical question had arisen. Whether this concealment was right or wrong, is a matter of opinion. It furthermore now appears that he did not submit the *whole* question which had arisen. That question was not whether he had jurisdiction of claims arising between 1st April and 31st December, 1830, only, but whether he had jurisdiction of *any* claims, *other than those suspended*

prior to the passage of this act. Nor did he submit one, and perhaps the most material, law point which had arisen: that was, whether the proceedings in reference to the restoration of the retrench allowances constituted "a contract" within the meaning of the act. The undersigned is not vain enough to suppose that he could have submitted any thing which would have led the mind of the Attorney General to a different conclusion upon the *point submitted*, although he should not have despaired of it; but upon the other point he cannot have a doubt. If he had been apprized of the solicitor's design, he would probably have brought the whole case, in all its law points, before the Attorney General, and prevented the unpleasant controversy; but so far from being apprized of the design, he could not even suspect it, being entirely unacquainted with any provision of law which authorized a judge in chancery, which the solicitor was in this case, to apply for the opinion of the Attorney General at all. The expression, "without a case stated," to which exception is taken, was intended to mean a *practical case*, in contradistinction to an *abstract point.* As well in reference to that, as generally to the conversation with the Attorney General, the undersigned gave the impressions remaining on his mind, and not the identical words used by that gentleman. Those impressions may not have been *precisely* correct, but he has no doubt they are nearly so. Whether the solicitor was right or wrong in the *manner* of his application, or in applying at all, the undersigned did not assert, having no design to make charges against that officer.

Upon the opinion expressed by the Judiciary Committee of the Senate, the undersigned has no comments to make. It has been given without a full knowledge of the case; and the object, in reporting the whole matter to you, is solely to bring it before them, and the rest of the legislative authority. If Congress agree with the solicitor, as to both the law and the facts, they will pass an explanatory act, and give the claimants the balance of the award.

Perhaps the undersigned has not viewed the question of jurisdiction altogether as a lawyer. He may have suffered his reasoning powers to travel out of the words of the law, and take for its meaning the "*bona fide*" intention of those who passed it. If appealed to individually, he has no doubt that ninety-nine in a hundred, of those who voted for the act, would say, that their only object was to provide for the equitable settlement of the controversy which *had arisen* between the contractors and the department; and that the idea of authorizing the continuance of those allowances contrary to the will of the department, or the making of new allowances not before made or suspended, or of allowances for damages or interest, never entered into their conception. It may be that the undersigned has been more influenced by the *real* intention of the legislature, than by their legal intention as elicited by the nice rules of judicial construction, which sometimes make the statutes

say that which notoriously those who passed them never intended to say. He thinks, however, that the language of the act in this instance is not inconsistent with the real meaning of Congress, and should be so construed as to effect it.

But the nice rules of construction relied upon on one point to sustain the solicitor's jurisdiction, if applied to another, will effectually annihilate it. The solicitor admits, and such is the distinct intimation of the Attorney General's opinion, that to give any jurisdiction whatever, there must be "*a contract by W. T. Barry, late Postmaster General*," and "*a suspension of pay upon that contract by the present Postmaster General.*"

By the rules of law or common sense, where, in the facts disclosed, is there "*a contract*" to sustain a single allowance the solicitor has made?

Courts of law and equity would undoubtedly construe the term "contract" used in the act to mean "a legal contract"—such "a contract," or *additional contract*, as the Postmaster General was authorized by law to make. This sweeps at once out of the solicitor's jurisdiction the whole 50 per cent. allowance, because the Postmaster General has no legal power to make an "additional contract" to allow for an alleged increased weight of mails carried under a regular contract; the whole of the retrenched allowances, because the Postmaster General has no legal authority to make an "additional contract" to pay an additional price for mails conveyed under a regular contract, without increasing the speed or the number of trips; the whole allowance for an extra mail from Washington to Philadelphia, (except an equitable allowance for increase of speed,) because the Postmaster General has no legal authority to dispense with the service contracted and paid for on any mail line, and make an additional contract with the same parties for the rendition of the same service, and thereby pay them twice for it; and the whole allowance for extra coaches between Baltimore and Washington, because the Postmaster General has no legal power, after contracting for such service in a regular contract in the consideration of which it is embraced, to make an "additional contract" for the same services, and thus pay for it twice over.

But let the legal absurdity be admitted, that the contracts meant in the act were not *legal contracts*, and that Congress intended to give the solicitor power to make allowances upon any illegal contracts, or *additional illegal* contracts, made by the late Postmaster General, &c., it would lead to the same result. What was the pretended contract in relation to the 50 per cent. allowances? In March, 1833, the contractors being then in receipt of pay for running a second daily mail, which they did not run, represented that the mail was too heavy to be carried in one stage, and offered to put on additional stock for an allowance of 25 per cent. on their existing pay. The department ordered them to run another full daily line, and nothing more. They were already under contract and

pay to run this line; so that this order, instead of making a *new* contract, was simply an execution of *an existing one.* From that time they merely rendered the service for the performance of which they were before under contract and pay. Now, was any additional service ordered *afterwards*, or any "additional contract" alleged to have been made? It is not pretended. In June, 1833, however, the contractors ask an allowance of 50 per cent. on all their pay from 1st January, 1832, and they say it was granted *at that time;* but the record says in February, 1835. What feature of a *contract* was there in this allowance, whenever granted? What did contractors agree to do for the money? Did they, in *June*, 1833, agree to put on additional stock *from the 1st January*, 1832? That was impossible. Yet the allowance was carried back to that date. All that was asked for in March, 1833, was 25 per cent., or $9,627 per year. Did the contractors in June, 1833, agree to render service from 1st January, 1832, which in equity entitled them to receive $19,254 per year from that time? The idea is absurd. Such a contract was impossible. Did they agree to do anything *prospectively*, or retrospectively, which they were not already doing, and amply paid for doing? No such thing has been shown; no such thing is stated by the solicitor. Without an agreement to do something, or furnish something on their part, there could be no contract; and an allowance without consideration is, in law and in fact, not a contract, but a gratuity.

The solicitor had no legal authority to allow gratuities; and, as there was no contract in the case, legal or illegal, he had, under his own construction of the law, no jurisdiction of this claim. Apply the same principle to the case of the retrenched allowances alleged to have been restored. What "contract," or "additional contract," was there in that case? Before the commencement of their regular contract service, the contractors had agreed, for a certain compensation, to run through between Baltimore and Wheeling in 2½ days, or 60 hours. They then offered, for the additional sum of $6,750 per year, to run through in 2 days, or 48 hours, during summer. Their offer was accepted. This was a "contract," or "*additional contract.*" To enable them to comply with the additional contract, after the weight of mails was increased, they were allowed $9,812 per year for extra horses and postillions. By the order of retrenchment, on the 19th November, 1833, this "additional contract" was received. Now, when or how was it received? The solicitor says in December, 1833, or January, 1834, and he gives his proofs. The first is a statement of the Hon. Andrew Stewart, the point of which is as follows, viz: "That shortly after the order of the Post Office Department suspending or discontinuing the increased speed, postillions, and second line, on the line from Washington and Baltimore to Wheeling, I had an interview with the late Postmaster General, &c. He then said, distinctly, that it should be done; that the speed, postillions, and

second line on this route, with the compensation, should be continued, and that I might so inform the contractors; which I did accordingly."

The next is a statement of Thomas D. Carneal, esq., the point of which is as follows, viz: "I reached Washington about the 10th of January, and, on the next day after my arrival, made known to Major Barry the peculiar hardships and difficulties the contractors on that route had to contend with, &c. He referred to Major Hobbie, who was called in, and to whom I was introduced by him," &c. "To aid me in this, I called on Colonel R. M. Johnson and Major Eaton. We met at the room of the Postmaster General, and the subject was taken up, fully discussed, and resulted in the restoration, with the allowances then paid by the department, for each extra service prior to the suspension order."

The next is a statement of the Rev. O. B. Brown, the point of which is as follows, viz: "I do not recollect the time, but I believe it was in the beginning of January, 1834. He (Major Barry) told me that he had determined to restore the whole of what had been retrenched on this route."

These statements all expressly refer to what was said and done in the month of *December*, 1833, and January, 1834. To them the solicitor adds a letter from the late Postmaster General to R. C. Stockton, dated 2d *February*, 1834, *which at once sweeps away his whole superstructure.* Major Barry says, "I have received yours of the 31st. It was intended to direct you to continue improvements *already* on the road to Wheeling *as indispensable.* The form of the order does not perhaps meet the case, and it will be important for you to be present *when it is done;* but this need not hasten your visit to Washington, to the neglect of other important engagements, and can finally adjust hereafter. I would say more, but the subject is a delicate one, that can better be arranged by *personal converse.* Be assured of my disposition to do what is just and liberal." And this letter the solicitor exhibits to prove that the retrenchments had already been restored. Why, on its face, it is the most conclusive proof of the contrary that can well be conceived. All the conversations of Messrs. Stewart, Carneal, Brown, and others, had most palpably led only to the order of the 28th January, 1834, written by Major Hobbie, not directing the restoration of the allowances, but stating that, if the contractors continued to employ the extra horses and postillions, the department would pay for them at some future time when it would be able. These, it had been represented, were "already on the road," and "indispensable." No sooner does Mr. Stockton receive this order, which restored *restored* none of the allowances absolutely, and only one of them conditionally, than he writes to Major Barry his letter of the 31st January, which elicits this reply, of 2d February. The matter was then placed in *statu quo.* The Postmaster General "had every disposition to do what is just and liberal;" but the matter was to be "finally adjusted *hereafter.*" The contractors were told "it will be important for

you to be present *when it is done.* It can better be arranged by personal converse hereafter." What clearer proof could there be that it had not then been done?

Now, when did this adjustment take place? Never. There is not a scintilla of evidence that any thing was ever said or done on the subject. The Postmaster General adopted another course to evince his liberality. He consummated and continued the 50 per cent. allowance, which amounted to more per year than the retrenched allowances; and when he was told that this act was construed to restore those allowances, he informed his junior assistant, and instructed his pay clerk, that such was not his intention.

Thus it is proved, conclusively as evidence can prove any thing, that there was no "contract" in this case, "*legal or illegal;*" none in the law or common sense. What the solicitor calls a contract is merely the expression of the Postmaster General's intention in various conversations; but indistinctly, and, in some cases, inaccurately remembered; for the witnesses speak of the restoration of the second daily line, which had never been discontinued. As there was no contract in this case, legal or illegal, there was nothing to support the jurisdiction of the solicitor, *according to his own construction of the law.*

Equally vain will it be to attempt to make out "a contract" for the alleged extra mail from Washington to Philadelphia, other than "an additional contract" to increase the speed three hours. Beyond that additional contract, and an equitable allowance for its faithful performance, no basis can be found in any contract, legal or illegal, on which the solicitor's jurisdiction can rest. Still less is there the shadow of "an additional contract" bringing the claims for extra coaches within the jurisdiction of the solicitor.

It will thus be perceived that, had the solicitor submitted the whole case to the Attorney General, on the principles assumed by himself, or afforded an opportunity to have it done, his jurisdiction must have been circumscribed to much narrower limits than the undersigned conceded to it. But the solicitor reserved to himself the power to decide what was a "contract" or "additional contract," and had no difficulty in finding one whenever the contractors had a claim. Retrospective allowances, loose conversations, orders to expedite the mails, and orders to bring on the whole mails, in the absence of all legal power and tangible form, have been raised to the dignity of Government contracts; and now the act of allowing a charge for extra service, under a contract made by the Hon. John McLane, is made *ipso facto* proof of the adoption, by the late Postmaster General, of some prior contract, or imaginary additional contract, authorizing it. Upon grounds so vague and untenable has a jurisdiction been vested, which has taken out of the funds of the Post Office Department $122,000, and claims near $40,000 more.

Let not the undersigned be misunderstood. He did not rest the jurisdiction of the solicitor on this ground. This is the ground oc-

cupied by the solicitor himself, and these are the results of the rules of construction which he adopts. The undersigned believed the act was intended to give him jurisdiction of all the claims suspended; nothing more, and nothing less; and these results are suggested to give the case, in the consideration of Congress, the full benefit of the construction of the law, which the solicitor lays down as the basis of his proceedings. The point was not presented to the Attorney General, nor has it received the consideration of the committee of the Senate.

The solicitor seems to take offence at the allegation, that the service for which he *he* has made allowances under the imaginary contract restoring the retrenched allowances, was never performed. So far as the *fact* is concerned, he admits it himself; but resorts to a course of reasoning to show that a *non-performance* is, in equity, equivalent to a *performance;* or rather that, in the imaginary contract for restoration, it was stipulated that the *pay* should be restored, but not the *service.*

By the original contract, the contractors stipulated to run through each way in 2½ days, or 60 hours. This the solicitor calls "*increased* speed."

By an additional contract, they stipulated for the additional compensation of $6,750 to run through each way, during the summer, in two days, without change in winter. This the solicitor calls the "*improved speed.*"

The time in which they were actually required to run through, during the contract, was as follows, viz:

	GOING.	RETURNING.
From 1st Jan'y to 18th April, 1832 - - -	3 days 4 hours	3 days 1½ hours.
Thence to 12th June -	1 " 23½ "	2 days.
3d October -	1 " 23½ "	2 days 1½ hours.
22d December -	2 " 12 "	2 " 12 "
22d April -	2 " 19 "	2 " 20 "
25th November -	2 " 6 "	2 " 6 "
23d April, 1834	2 " 23 "	3 days.
22d November -	2 " 12 "	2 days 15 hours.
18th April, 1835	2 " 23 "	3 days.
28th November -	2 " 12 "	2 days 15 hours.
31st December -	2 " 23 "	3 days.

On the 3d October, 1832, a dispensation of the "improved speed" was granted temporarily on account of the condition of the Cumberland road, which was then broken up for repairs.

Now the solicitor does not pretend that the "improved speed" was required or performed after the retrenchment and the imaginary restoration, but to sustain his allowance for a service confessedly

not performed, he flings over the bad roads of 1832 into 1834 and 1835, and most logically extends the temporary dispensation of October 3d, 1832, to the close of the contract. Unfortunately, however, for the chain of his reasoning, one half the dispensation was withdrawn in the summer, 1833, prior to the retrenchments, during which the contractors were required to run through, and generally did run through, in 2 days and six hours.

To make his reasonings hold together, they should have been required to run through in that time, at least, during the summer of 1834 and 1835. So far from it, they were allowed 2½ days one way, and 2 days 15 hours the other, being by three hours a less speed one way than they were under contract to make, before the "improved speed" was first authorized. The restoration, therefore, by the solicitor's own showing, was a restoration of *pay* only, but not of *service*. So far as *performance* is concerned, what more has the undersigned alleged? As to the fact, there is no difference. The service was not performed. It is not pretended to have been performed. The allowances made for it, therefore, is not an equitable allowance for *services performed;* for the services *performed*, the contractors were fully paid according to their contract. The question as to the solicitor's power to consider and allow claims for services *not performed*, requires no discussion.

The undersigned, in his report, suggested that the equitable claims of the Government for services paid for and not performed under the contracts in question, ought *ought* to have been set off against the claims of the contractors. The solicitor, however, disclaims all power to consider the rights of the Government in this matter, and professes to be surprised at so "loose an idea." The strict construction of his powers, adopted by him in this point, is certainly very convenient for the contractors, though, perhaps, not very defensible. For example: The contractors were under *under* contract and pay to run two daily mail lines between Baltimore and Philadelphia, but for more of the year ran less than one. At length the department ordered them to run for a few months, being no more than they were paid [for] doing the whole year. These lines are both paid quarterly. Months after the first services have been performed, however, the contractors allege that this swift line is run under some new and special contract, and must be paid for as such. Finally, the solicitor confirms allegation. The Department then insists that the amount *paid for it already* shall be set off against the *amount now claimed*, but the judge, in equity, not only rejects the claim, but is astonished at the suggestion.

So, on the route from Washington to Baltimore, the contractors were under contract and pay to run four or five daily mails, and only ran two or three. A swifter mail was wanted, and one of the two or three already run was expedited, but the number running not increased. This, also, the contractors maintain, is an *additional* mail, and the solicitor so decides.

The department then insists that the amount paid for the line which ceased to run to make room for it shall, in the court of equity, be taken as part pay for it, but the judge is astonished at such a "loose idea."

So the department paid for running several daily mails between Washington and Baltimore, as well as "*express mails whenever required.*" But, when express mails were required, the contractors insisted that they ought to be paid for them specially, and the solicitor decides that they are entitled to it, rejecting the "loose idea" of making any set off of the moneys paid for the identical service under their general contract. It cannot be necessary further to illustrate the unjust and unequal operation of such a principle.

It is not the business of the undersigned to decide what weight ought to be given to his "*official assertions.*" Though sustained in his letters to the solicitor by proofs which he deemed conclusive, that officer, no doubt, thought he was right in disregarding them altogether, and basing his award on the assertions of the claimants and their fellow-contractors, the affidavits of their agents, who were, or had been, directly dependant upon them; of tavern-keepers, who profit by their custom; and of personal friends—all taken *ex-parte*, without cross-examination, and shown to be full of errors and extravagancies.

The greater portion of these papers, which have been made to out-weigh the "*official assertions,*" books, records, and files of the department, is not such, however respectable may be the witnesses, as would be received by any court of law or equity in the United States, which has the least respect for the ordinary rules of evidence. The truth of this will be confirmed by adverting to such of them as the solicitor has copied into his letter.

Though, perhaps, true upon the data assumed, it may be safely asserted, that the estimates and calculations are wholly deceptive, as a means of showing the value of the service, or the amount which ought, in equity, to be paid for it. They present a case, made up by the parties claiming, with all the colorings which interest can inspire.

The undersigned introduced a notice of the committees of Congress into his report only to avail himself of their conclusions to elucidate the case. As to the equity of certain allowances to the contractors, those committees and the solicitor differ in opinion. The committees thought the allowances made, prior to their investigations, far more than were *than were* equitable. The solicitor thought all those allowances, and $122,000 more, some $40,000 less than is equitable. The committees certainly did not condemn the solicitor, but the solicitor may have condemned the committees. Which was right, or whether either, is a matter of opinion; but to agree with the one is not necessarily a censure of the other.

The solicitor introduces the present mail service, between Washington and Baltimore, as a criterion with which to compare the ser-

vice rendered by contractors on the Wheeling route. There is no analogy in the cases. On the Baltimore route no passengers are carried with the mail, as they all travel by the railroad. On the Wheeling route all travellers passed in stages. The swift line carried generally from six to ten, and the slow line ten or twelve. The solicitor falls in the habit of contractors in making estimates, omitting, altogether, the immense sums received for passengers.

There are better tests of the extravagance of these allowances. The contractors offered the services of one line at $4,450 per year, or $17,800 for four years. The solicitor's award fixes their pay for two lines on the same route, one of them expedited, at $57,762 per year, or $231,048 in four years. Here was an *improvement* of $213,248, or more than *fourteen fold*.

But take another test: The present mail pay on all the great routes from Baltimore and Washington to *Louisville, Ky.*, a distance of 689 miles, is but $44,882 per annum, falling short of the *equitable* pay allowed by the solicitor, on less than half the distance, $12,880.

The great eastern mail falls upon this line at Washington, Pennsylvania, and is now carried upon it 411 miles, being 101 miles more *more* than the distance from Baltimore and Washington to Wheeling; moreover, from Baltimore to Wheeling, during the session of Congress, and from Wheeling to Cincinnati, during the whole year, no passengers are now permitted to be carried in the mail stages going out; whereas, there was no restriction in the former contracts, and from six to ten were generally carried in the swift line, and ten to twelve in the slow line.

But take the line of the great eastern mail from Philadelphia, through Bedford and Washington, Pa., Wheeling and Cincinnati, to Louisville, Kentucky, a distance of *seven hundred and fifteen miles*, and the present compensation for carrying it, most of the way without inside passengers, and restricted to three on the outside, is $39,081 42 per year, being $18,680 52 less than has been allowed to the claimants in this case, for less than half the service without restrictions.

When the great and constant increase of mails from east to west is considered, the disparity of the equitable allowance, made by the solicitor to the compensation, at which double the service is now rendered, is too obvious to need further illustrations.

The undersigned does not send, with this report, the papers referred to, because he neither asks nor expects an investigation by you, with a view to deprive any one of his commission, or to perform any other definitive act. If you think the matters stated worth the consideration of the legislative branches, you will send the reports to them; and then, if thought proper, the matters alleged will be fully investigated. Whenever such an investigation shall be instituted, the papers and proofs to sustain the statements made to you, and through you to Congress, will be ready for presentation.

The undersigned is reproached with making himself "a party" in this case. It cannot be meant that he has any personal interest in it; on the contrary, by the stand he has taken, he may incur the lasting hostility of powerful men without securing the least advantage to himself. If, by becoming a party, it be meant that he maintains the rights of the Government as absolutely as if they were his own, he is content to bear the reproach. This he considers himself bound to do, *and* whatever personal hazard or sacrifice, so long as entrusted with their guardianship, on all occasions, when attempts may be made to invade the interests or take the property of the public under his charge, without right or law, he will ever be "a party" ready to defend them by all appropriate means. In this matter, he has sought only to place the claims of the contractors in their true light, "without fear, favor, or affection;" and having taken the appropriate steps to accomplish that object, he is content to abide the result.

With the highest respect,
Your obedient servant,
AMOS KENDALL.

Exhibit L, referred to in plaintiff's petition, p. 11.

Exhibit L.

In the Senate of the United States, January 20th, 1837.—(Read and ordered to be printed.)

Mr. Grundy made the following report:

The Committee on the Judiciary, to whom was referred the petition of Lucius W. Stockton and others, have had the same under consideration, and beg leave to present the following report:

A brief history of the transactions which have been submitted to the investigation of the committee will contribute to the right understanding of the views entertained, and the conclusions to which the committee have arrived.

The petitioners were, during the administration of the late Postmaster General, large contractors for the transportation of the mail on some of the most important routes in the United States; on some of these routes, changes or modifications of the contracts were made; on others, extra services, with a compensation promised, were ordered by the Postmaster General. In most instances, the compensation was paid or advanced by the entry of a credit in favor of the contractors upon the books of the department. When the present Postmaster General came into office, he considered it his duty to examine into the legallity of the allowances made by his predecessor to the petitioners. Upon this examination, he came to the conclusion that a large portion of the allowances made to the petitioners *were* unauthorized by any existing law, and, to secure the department from loss, he retained the moneys which fell due to

them upon current contracts at the end of each quarter, to an amount equal to the different sums which he believes had been illegally paid or advance to them. In this state of things, the petitioners applied to Congress, at its last session, and Congress, upon their application, passed the act of 2d of July, 1836, for the relief of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore. By this act, the Solicitor of the Treasury is selected to settle the claims of the petitioners, and the claims to be settled by him are restricted to extra services, performed "by them as contractors for carrying the mail, under and by virtue of certain contracts therefor, by them alleged to have been made and entered into with them by William T. Barry, late Postmaster General of the United States; and, for this purpose, to enquire into and determine the equity of the claims of them, or any of them, for, or on account of, any contracts, or additional contracts, with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General, and to make them such allowances therefor, as, upon a full examination of all the evidence, may seem right, according to the principles of equity; and that the Postmaster General be, and he is hereby, directed to credit such mail contractors with whatever sum or sums of money, if any, the said solicitor shall so decide to be due to them, on account of any such service or contract; and the said solicitor is hereby authorized to take testimony, &c.

By the provisions of this act, it is apparent that Congress intended that, not only a different arbiter, but a different rule of adjudicating these claims, should be applied from that existing prior to the passage of the act. By the former laws, the Postmaster General decided upon all such claims; by this act, the decision of these claims is transferred to the Solicitor of the Treasury.

By the former laws, the Postmaster General had no rule for the government of his conduct, but the rules prescribed in the several acts of Congress, establishing and regulating the Post Office Department. By this act, the principles of equity are to govern the decision of the solicitor.

From this view of the act of the last session, the committee did not deem it proper to go into an examination of the claims decided upon by the solicitor, except so far as to ascertain whether the claims adjudicated upon were submitted to his decision by the "act for the relief of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore," approved 2d July, 1836. Upon this branch of subject, the attention of the committee has been principally directed to the just construction of the language of that part of the act conferring upon the solicitor his powers. The solicitor is directed "to enquire into and determine the equity of the claims of them, or any of them, for, or on account of, any contract, or additional contract, with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General,

and to make them such allowances therefor, as, upon a full examination of all the evidence, may seem right, according to the principles of equity," &c.

By the expressions here employed, it seems to this committee that two things only are requisite to give power or jurisdiction to the solicitor:

1st. That the claims presented should be for, or on account of, contracts made with the late Postmaster General.

2d. That the present Postmaster General shall have suspended the pay.

The committee have not discovered that any allowance has been made by the solicitor, except in cases falling within his jurisdiction, when tested by these restrictions. It is true, he has allowed compensation for services adjudged by him to have been rendered by the petitioners since the late Postmaster General retired from office; still, these claims were on account of contracts made by him, and the act of Congress plainly submits to the adjudication of the solicitor all such cases, without any reference to the time when the services were rendered; and it cannot be believed, that the time when the services were rendered, or the claims fell due, was deemed in any wise material by Congress, or some expression restricting the powers of the solicitor would have been introduced into the act, besides the act directing the solicitor to settle the accounts, passed after the expiration of all the contracts, and after the rendition of all the services which may have been performed under them; from which facts, in connexion with the broad and comprehensive language of the act, it may fairly be inferred, as the intention of Congress, that the whole claims for services, under the contracts specified in the act, were to be adjusted and settled by the solicitor, without regard to the time when the services were performed; and further, that a suspension of any portion of the pay, even for a single quarter, upon such contract, by the present Postmaster General, authorized the solicitor to investigate all the claims of the petitioners under such contract.

That Congress intended the award of the solicitor to be final, is apparent from the direction of the act: "that the Postmaster General be, and he is hereby, directed to credit such mail contractors with whatever sum or sums of money, if any, the solicitor shall so decide to be due to them," &c. If Congress had intended to revise the decision of the solicitor, the Postmaster General would not have been directed to make the payment without the intervention or further action of Congress.

Unless it appeared, which is not suggested by any one, that some cause exists which would vitiate or set aside the award between private parties before a judicial tribunal, the committee cannot recommend the interference of Congress to set aside this award, and more especially as it has been made by a high officer selected by the Government, and the petitioners have been subjected to the

trouble and expense of investigating their claims before a tribunal created by Congress itself.

It appears that, since the award was made by the solicitor, the Postmaster General has paid to the petitioners the sum of $120,938 30, leaving the balance of $40,625 59 unpaid, of the sums awarded in favor of the petitioners. From the view which the committee have taken, the conclusion at which they have arrived is, that the whole amount decided to be due, and owing to the petitioners, by the Solicitor of the Treasury, ought to be paid to them out of the funds of the Post Office Department, according to the directions of the act entitled "An act for the relief of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore," and that no further action of Congress is necessary. Therefore, the committee recommend the adoption of the following resolution: (Rec. No. xxxvii.—15.)

Resolved, That the Postmaster General is fully warranted in paying, and ought to pay, to William B. Stokes and others, respectively, the full amount of the award of the Solicitor of the Treasury.

Exhibit M, referred to in plaintiffs' petition, p. 11.

Exhibit M.—Mr. Grundy's report.

In Senate, *February 17th*, 1837.

Mr. Grundy made the following report:

The Committee on the Judiciary, to which was referred the message of the President of the 15th inst., with the accompanying documents, in relation to the claim of Stockton, Stokes, and others, have had the same under consideration, and make the following report:

The President of the United States, in his message, expresses no opinion in relation to the subject under consideration, nor does he recommend the adoption of any measure whatever. He communicates the report of the Postmaster General, the review of that report by the Solicitor of the Treasury, and the remarks of the Postmaster General in relation thereto, together with such vouchers as are referred to by them respectively.

The committee have considered the documents communicated, and cannot discover any cause for changing their opinion upon any of the principles advanced in their former report upon this subject, nor the correctness of their application to this case. They therefore recommend the adoption of the resolution heretofore reported by the committee.

Exhibit M a, referred to in plaintiffs' petition, page 11.

Exhibit M a.—Letter from the P. M. General to Judiciary Committee of the Senate.

POST OFFICE DEPARTMENT, *January 18th*, 1837.

Hon. FELIX GRUNDY,
Chairman Judiciary Committee U. S. Senate.

SIR: Having casually heard of the decision of your committee in reference to the memorial of Messrs. Stockton and Stokes, and the act for their relief, I cannot satisfy myself that I shall have performed my duty in relation to the public interests entrusted to my charge, if I do not most respectfully ask to be heard by them before they make their report.

In that event, I think I can satisfy them that the act referred to was not intended to, and did not in fact, authorize the action of the Solicitor of the Treasury upon any claims set up by Messrs. Stockton and Stokes, other than such as had been suspended from their credit by me.

But should I be unsuccessful in that effort, I cannot be mistaken as to my ability to show, that, having already received over *one thousand dollars*, without rendering any equivalent whatsoever in public services, no step ought to be taken by the committee or by Congress tending to enable them to receive near *forty thousand dollars* more, equally without an equivalent, or to bring reproach upon me, directly or indirectly, for refusing to pay it under my construction of the law; on the contrary, I mistake the case, and my ability to make myself understood, if I cannot convince the committee that the act referred to, instead of receiving greater force from any action on their part, ought to be forthwith repealed.

Very respectfully, your obedient servant,
(Signed) AMOS KENDALL.

WASHINGTON, *January 20th*, 1837.

Hon. AMOS KENDALL.

SIR: Your letter of the 18th instant has been laid before the Judiciary Committee, and I am instructed by them to say, that they have placed upon the act of the last session of Congress, for the relief of William B. Stokes and others, a construction, the correctness of which the committee entertain no doubt; and that, had any doubt existed, resort would have been had to the Attorney General of the United States, who is the proper officer to be applied to, when the legal interpretation or construction of an act of Congress may be required.

As to the allegation in your letter, that no equivalent in services has been rendered by the petitioners for the large sums awarded to them by the solicitor, the committee have felt it to be their duty to

be governed by the decision of the arbiter selected by Congress, unless fraud, or some unfair practice in procuring the decision, should be shown. It is not understood that anything of this kind is suggested; and the fact that you have paid $120,000 under the award, forbids the idea.

If the enquiry is to be gone into by the committee, whether the services have been rendered by the petitioners for which compensation has been awarded, the committee should be clothed with larger powers than those now possessed by it. An authority to send for witnesses and papers would be indispensable. The Senate can order the investigation you request, and can give to the committee the authority necessary to render such an investigation full and satisfactory. The committee, therefore, are of opinion that your application should be made directly to that body, and not to this committee; and to enable you to do so, I am directed by the committee to make the report, which was prepared before the reception of your letter, and not to ask the action of the Senate until you have time to present your application to that body.

(Signed) FELIX GRUNDY.

Exhibit N, referred to in plaintiffs' petition, p. 11.—Copied in record in complainants' exhibit 1, p. —.

Exhibit O, referred to in plaintiffs' petition, p. 11.—Copied in record in complainants' exhibits 1, p. —.

Thereupon the court, on motion of the relators, by their said attorney, passed the following rule:

Circuit court of the District of Columbia for the county of Washington.

THE UNITED STATES, on the relation of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore,
versus
AMOS KENDALL, Postmaster General of the United States.

The petition of the relators, and the affidavit of Lucius W. Stockton, one of them, having been presented to the court, setting forth, in substance, that the said relators, having sundry claims upon the Post Office Department of the United States, under contracts made by them with the late Postmaster General, William T. Barry, did apply to the Congress of the United [States] for relief in the premises; that the Congress of the United States did, at the prayer of the said parties, pass an act, which was approved on the 2d day of July, 1836, in and by which it was, among other things, provided, that the Solicitor of the Treasury do examine into and adjust the said claims therein specified, and that the Postmaster General credit

said contractors with whatever sum or sums or money, if any, the said solicitor shall so decide to be due to them on account of any such service or contract; that the said Solicitor of the Treasury did, in fact, make such decision and award, and did therein and thereby find due to said relators the sum of $161,563 89, for principal and interest; that said Amos Kendall, although notified of said awards and decisions, did omit and neglect, for a considerable period of time, to carry the said award and the said act of Congress into execution, and did sometime after partially execute the same, by carrying to the credit of the said relators the sum of one hundred and twenty-two thousand one hundred and one dollars and forty-six cents, ($122,101 46,) leaving, of the said principal sum so awarded, the sum of $39,-472 47 still due, which has not been credited, although requested; that a correspondence took place between the relators, or some of them, and the President of the United States, and a memorial was presented on their behalf to the Senate of the United States, who proceeded thereupon, and, upon the reports of the Committee of the Judiciary, passed a resolution, "that the Postmaster General is fully warranted in paying, and ought to pay, William B. Stokes and others, respectively, the full amount of the award of the Solicitor of the Treasury."

That the said Postmaster General, notwithstanding the premises and other facts detailed in said petition, still refuses, omits, and neglects to execute the said act of Congress and said award, by carrying the said sum so withheld to the credit of said petitioners. Wherefore, the petitioners pray the said court to award the United States writ of mandamus to be directed to the said Amos Kendall, Postmaster General of the United States, commanding him—

1st. That he shall fully comply with, obey, and execute the aforesaid act of Congress of July 2d, 1836, by crediting the petitioners with the full and entire sum so awarded as aforesaid, in conformity with said award and decision; and

2d. That he shall pay to said petitioners the full amount so awarded, with interest thereon, deducting only the amount which shall be justly charged or chargeable to the said memorialists against the same.

Wherefore, on motion of Richard S. Coxe, for the relators, and upon the reading of the said petition and accompanying documents, it is, this 26th day of May, 1837, ordered by the said circuit court, that the said Amos Kendall, Postmaster General of the United States, show cause, on Thursday, the first day of June next, why the said writ of mandamus should not issue, as prayed by said memorialists; and that a copy of this order be served on the said Amos Kendall, Postmaster General, as aforesaid.

By order of the court.

Test: WILLIAM BRENT, *Clerk.*

May 26, 1837.

[Rec. lxxxviii, J. T. 1843.]—19

A copy of which said rule was made and served on said Amos Kendall, Postmaster General as aforesaid, by the marshal of the District of Columbia, and so certified to the court.

Whereupon, afterwards, to wit, on the 7th day of June, in the year of our Lord one thousand eight hundred and thirty-seven, the court, on motion of the said relators, by their attorney aforesaid, made the following order, to wit:

Order for mandamus nisi.

CIRCUIT COURT, *Washington County:*

UNITED STATES, on the relation of WILLIAM B. STOKES, RICHARD C. STOCKTON, LUCIUS W. STOCKTON, and DANIEL MOORE,
vs.
AMOS KENDALL, Postmaster General of the United States.
} On motion for mandamus, &c.

It having been made to appear to this court, that the said William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, claimed to be credited to certain credits and allowances on their several contracts for the transportation of the mail of the United States; that the Congress of the United States passed a certain act, which was approved by the President of the United States on the 2d day of July, 1836, in and by which it was, among other things, provided, that the Solicitor of the Treasury was authorized and directed to settle and adjust the claims of the said mail contractors for certain services performed by them, as contractors for carrying the mail under and by virtue of certain contracts therefor, by them alleged to have been made and entered into with them by William T. Barry, late Postmaster General of the United States, and for this purpose to enquire into and determine the equity of the claims of them, or any of them, for or on account of any contract, or additional contract, with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General; and to make them such allowances therefor as, upon a full examination of all the evidence, may seem right, according to the principles of equity; and that the Postmaster General be, and he is hereby, directed to credit such mail contractors with whatever sum or sums of money, if any, the said solicitor shall decide to be due to them for, or on account of, any such service or contract; that, after the passage of the said act of Congress, Virgil Maxcy, being the Solicitor of the Treasury, did, in pursuance and execution of the same, proceed to examine and adjust the claims of the said parties as he was therein and thereby authorized and directed; that, on the 12th and 23d days of November, 1836, he did make out and transmit to the said Amos Kendall, the said Postmaster General aforesaid, his award and decision upon

the claims of the said mail contractors; and that said Solicitor of the Treasury did, on or about the 26th day of December, 1836, make out and report to the Congress of the United States the law and the facts upon which his decision had been founded. And further, that the said mail contractors thereby became, and were, entitled to have the sum of one hundred and sixty-one thousand five hundred and sixty-three dollars eighty-nine cents carried to their credit by the said Amos Kendall, Postmaster General as aforesaid; but that he, the said Amos, although fully notified of the premises, and after a considerable delay, has only so far obeyed and carried into execution the said act of Congress, and said award and decision, as to credit the said parties with the sum of $122,101 46, and that he has from that time refused, and does still refuse, omit, and neglect to pay or credit them with residue of said sum so awarded and decided to be due to them, being the sum of $39,462 43.

And whereas the same William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, by their counsel, did present to this court their petition, setting forth, among other things, the premises, and praying said court to award and direct the United States writ of mandamus to issue, to be directed to the said Amos Kendall, Postmaster General as aforesaid, commanding him that he fully comply with, obey, and execute the aforesaid act of Congress of July 2d, 1836, by crediting said mail contractors with the full and entire sum so awarded in their favor by the Solicitor of the Treasury as aforesaid, in conformity with said award and decision; and that he pay to the said mail contractors the full amount so awarded, with interest, deducting only the amount which shall be justly charged or chargeable to the said mail contractors against the same. And whereas the said circuit court, upon a full consideration of said petition, and the documents thereto annexed, did order and direct that the said Amos Kendall should show cause, if any he had, on the 1st day of June instant, why the said United States writ of mandamus should not issue as prayed; which order was duly served on the said Amos Kendall, Postmaster General as aforesaid, on the 26th day of May, 1837. And whereas the said Amos Kendall, Postmaster General as aforesaid, did not appear on the day mentioned in said rule, and did not show, and has not shown, any good and sufficient cause against the granting the prayer of said petitioners. And whereas the said circuit court, upon a full consideration of the premises, and after argument by the counsel of said petitioners and relators, was and is of opinion that a writ of mandamus should issue, to be directed to the said Amos Kendall, Postmaster General as aforesaid, commanding him that, without delay, and immediately on the receipt of the same, he, the said Amos Kendall, Postmaster General as aforesaid, should fully comply with, obey, and execute, on his part, the aforesaid act of Congress, by crediting said mail contractors with the full amount of money which the said solicitor did, as aforesaid, decide to be due

them, for and on account of such services or contracts, according to the true intent and meaning of said award and decision.

Therefore it is hereby ordered and directed, that the said writ of mandamus do issue, commanding the said Amos Kendall, Postmaster General, that he do forthwith and without delay, immediately upon the receipt of said writ, credit such mail contractors with the full amount of money so awarded and decided by said Solicitor of the Treasury to be due to said mail contractors, according to the true intent and meaning of said award and decision, or that he show cause to the contrary, on or before 10 o'clock A. M. on Saturday, the 10th day of June instant.

By order of the court.

Test: W. BRENT, *Clerk.*

And thereupon the mandamus nisi issued in the words following, to wit:

Writ of mandamus nisi.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Amos Kendall, Postmaster General of the United States, greeting:

Whereas the Congress of the United States of America did enact and pass a certain act of Congress, which was approved by the President of the United States, on the second day of July, in the year of our Lord one thousand eight hundred and thirty-six, in and by which said act of Congress it was, among other things, enacted and provided, that the Solicitor of the Treasury be, and he is hereby, authorized and directed to settle and adjust the claims of William B. Stokes and Richard C. Stockton, of Maryland, and Lucius W. Stockton and Daniel Moore, of Pennsylvania, for extra services performed by them as contractors for carrying the mail, under and by virtue of certain contracts therefor, by them alleged to have been made and entered into with them by William T. Barry, late Postmaster General of the United States, and for this purpose to enquire into, and determine the equity of, the claims of them, or any of them, for or on account of any contract or additional contract with the said Postmaster General, on which their payments may have been suspended by the present Postmaster General, and to make them such allowances therefor as, upon a full examination of all the evidence, may seem right, according to the principles of equity; and that the Postmaster General be, and he is hereby, directed to credit such mail contractors with whatever sum or sums of money, if any, the said solicitor shall so decide to be due to them, for and on account of any such service or contracts; and the solicitor is hereby authorized to take testimony, if he shall find it necessary to do so; and that he report to Congress at its next session the law and the facts upon which his decision has been

founded. And whereas, after the passage of the said act of Congress, Virgil Maxcy, esquire, being Solicitor of the Treasury, did assume upon himself the power and authority created and conferred thereby, and did proceed to execute the same on his part, and did settle and adjust the claims of the said William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, as mentioned and provided in and by said act of Congress, and in pursuance of the provisions of the same; and, upon a full examination of all the evidence, did make them allowances on account of said contracts, or additional contracts, made and entered into with them by William T. Barry, late Postmaster General of the United States, and on which their pay had been suspended by yourself, then and now the Postmaster General, according to the principles of equity; and did decide, finally, that there was due to the said parties mentioned in the said act of Congress, or to some of them, upon the grounds specified in said act, on account of said services and contracts, the sum of one hundred and sixty-one thousand five hundred and sixty-three dollars eighty-nine cents, and did publish and deliver his said award and decision to you, as Postmaster General of the United States, on or about the 12th and 23d days of November, in the year eighteen hundred and thirty-six; and *did* subsequently, to wit, on or about the 26th day of December, in the year aforesaid, in further pursuance and execution of the said act of Congress, the said Virgil Maxcy, Solicitor of the Treasury as aforesaid, did report to Congress, it being at its next session after the passage of the aforesaid act, his said award and decision, and the law and the facts upon which the same had been founded. And whereas the said award and decision so made was, as aforesaid, duly notified to you as the Postmaster General of the United States, and it thereby became your duty, and by the said act of Congress you were thereupon required, to credit said mail contractors with the sum of money which the said solicitor had, as aforesaid, decided to [be] due to them for and on account of such services or contracts; which requirement you in part only complied with, by carrying to their credit the sum of one hundred and twenty-two thousand one hundred and one dollars and forty-six cents. And whereas you did omit, refuse, and neglect, and still do refuse, omit, and neglect, notwithstanding said notice and requirement, to credit the said mail contractors with the residue of the said sum, amounting to thirty-nine thousand four hundred and seventy-two dollars and forty-seven cents, so awarded and decided to be due to the said mail contractors. And whereas, heretofore, to wit, at a session of the circuit court of the District of Columbia, for the county of Washington, the said circuit court, at the instance of relators, by their counsel, did grant a rule requiring you to show cause, if any you had, among other things, why a writ of mandamus from the said court should not be awarded and issued to you, commanding you fully to comply with and execute, on your part, the aforesaid act of Congress of July 2d, 1836,

by crediting the said mail contractors with the full and entire sum so awarded and decided, as aforesaid, to be due to them, by the said Solicitor of the Treasury, in conformity with the true intent and meaning of the said award and decision; which rule was served on you, on the 26th day of May, 1837. And whereas you have failed to appear, according to the said rule, and have not shown any cause why the said writ should not be issued as prayed. And whereas the said circuit court, upon consideration of the said matters, and of the arguments of counsel on the part of said relators, in this behalf, was, and is, of opinion that you were bound to perform and execute, on your part, the said act of Congress, by crediting the said mail contractors with the full and entire sum so awarded to be due to them by the Solicitor of the Treasury, in conformity with the true intent and meaning of the said award and decision, and that a writ of mandamus should issue accordingly.

Therefore, you are hereby commanded and enjoined, that immediately after the receipt of this writ, and without delay, you do fully comply with, obey, and execute, on your part, the aforesaid act of Congress of July 2d, 1836, by crediting said mail contractors with the full and entire sum so awarded and decided as aforesaid to be due to them by the said Solicitor of the Treasury, according to the true intent and meaning of said award and decision, so that complaint be not again made to the said circuit court; and that you certify perfect obedience to, and due execution of, this writ to the said circuit court on Saturday, the tenth of June, instant; or that you do, at ten o'clock of that day, show cause to the said court why you have not so done as commanded. Thereof fail not at your peril, and have you then and there this writ.

Witness the honorable William Cranch, chief judge of our said court, the 6th day of June, in the year of our Lord one thousand eight hundred and thirty-seven.

Issued this seventh day of June, 1837.

W. BRENT, *Clerk.*

Which mandamus was served on Amos Kendall, Postmaster General of the United States, by the marshal of the district aforesaid, and so certified to the court.

1837, June 10th.—This being the return day of the mandamus, &c., personally appeared in court here, as well the relators aforesaid, by their attorney aforesaid, as the said Amos Kendall, Postmaster General, by F. S. Key, esquire, his attorney; and on motion of the said Amos Kendall, Postmaster General, by his attorney aforesaid, further time is given him to file his answer, &c. &c.

And this 24th day of June, in the year of our Lord one thousand eight hundred and thirty-seven aforesaid, the said Amos Kendall, Postmaster General, by his attorney aforesaid, filed in court here the following answer and exhibit, to wit:

Answer of Postmaster General to mandamus nisi.

To the honorable William Cranch, chief justice of the circuit court for the District of Columbia:

On the 7th instant, the undersigned received, by the hands of the marshal of the District of Columbia, a writ of mandamus from the circuit court of the district, commanding him to credit Messrs. Stockton and Stokes and others, with a certain sum of money awarded to them by the Solicitor of the Treasury, by virtue of authority alleged to be vested in him by a certain act of Congress for their relief, passed on the 2d day of July, 1836, or to show cause why he has not so done as commanded.

The undersigned is unable to persuade himself that the performance of the act commanded would not, under existing circumstances, involve a violation of the oath he has taken faithfully to discharge the duties of Postmaster General according to law, and to support the Constitution of the United States. Although his opinion of the powers and jurisdiction of this court remains unchanged, yet that respect for the tribunal which elicited his former communication, duty to himself, and the obligations he is under to vindicate and sustain the institutions of his country, impel him to present the reasons which have induced his present determination.

Before he proceeds with that exposition, he begs leave, emphatically, to disavow all intention or of idea claiming irresponsibility or immunity in the discharge of his official functions, or of shrinking from the most scrutinizing investigation, by any legitimate authority, into his actions or his motives. It is his pride to belong to a republic where no man is free from responsibility, however high, and where none is without protection or redress, however low. As a citizen, it is aim to perform his domestic and civil duties with strict regard to morality and law. As a public officer, it is his most anxious endeavor to discharge every duty, which may be imposed upon on him, with fidelity and zeal; in all capacities to encounter labor with patience, and responsibility without fear. If, in the attitude he now occupies in relation to this court, there is that which every sensitive man would wish to avoid, he is sustained by a consciousness of right, under which circumstances cease to be painful, and, consequently, become indifferent.

With these preliminary remarks, the undersigned proceeds to give his reasons for declining obedience to the order of the court.

First reason.

It is doubted whether, under the Constitution of the United States, (it) confers on the Judiciary department of the Government authority to control the Executive department in the exercise of its functions of whatsoever character.

In the division and separation of powers, the Constitution of the United States uses the following language, viz:

"All legislative powers herein granted shall be vested in a Congress of the United States." "The Executive power shall be vested in a President of the United States." "The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." It gives the President power, by and with the advice and consent of the Senate, to appoint "judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law," &c., and makes it his duty to "*take care that the laws be faithfully executed.*" It is "declared that the President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, and other high crimes and misdemeanors;" and so careful is the Constitution to give the Judiciary no control over the Executive department, that instead of subjecting executive officers to the courts for official offences and delinquencies, it constitutes a special tribunal in the Senate for their trial in all cases of impeachment.

The plan of the Constitution will be more clearly understood by a brief reference to the history and nature of the executive and judicial powers as they exist in our Government.

In the country from which the principles of our system of government are measurably derived, the judicial originally formed a part of the executive power. An exposition of the law is frequently necessary before it can be understandingly executed, and the judges were appointed by the King to give it. When given, he proceeded to carry it into execution. Over that execution the judges had no power, it being effected by sheriffs, another set of officers wholly dependent on the King. To shield the subject from regal oppression, the judges were finally made independent of the King, though removable by Parliament; but the sheriffs were still left at the Monarch's will. The *expounding* functionary was rendered independent, but the execution was still left to the King.

In our system we have followed the modern English model. Our judges, after appointment, are independent of the Executive; but our district attorneys, who manage prosecutions, and our marshals, who execute the decisions, orders, and decrees of our courts, are not only appointed by the President, but hold their offices from day to day at his will. They are the instruments by which the President "takes care that the laws be faithfully executed," as expounded by the courts.

The sole constitutional function of the judges is to *expound the laws.* It is the function and duty of the Executive to *see them faithfully executed.*

The necessity of a judiciary department arises solely from the impracticability of so framing the laws as exactly to fit every case which may arise in the endless diversity of human affairs. If the

laws could be precisely adapted to every case, there would be no need for a judiciary to expound them. The Executive authority could proceed forthwith to carry them into execution. But most general, and some special laws, require exposition before they can be understandingly executed. This is the judicial function—it is to declare what the law is, and apply it to the case. When that is done, the proper function of the judge ceases, and the Executive commences. The duty of the marshal, who is but a part of the Executive Department, is to *execute the law as thus expounded.*

Many special laws are not susceptible of any exposition. They apply directly to the case, and cannot be made plainer by any court. Nothing is needed after their passage but execution. Such are the laws which appropriate sums of money to individuals. Such are laws which require specific acts of executive officers. The intervention of the expounding function is not necessary in these cases, because it can make them no plainer; all that is to be done is to execute them. The officers who are to perform the duties enjoined, are all made dependent on the will of the President, directly or indirectly, that he may, through his power over them, "*take care*" that each executes the laws in his appropriate sphere.

A distinction has been taken between these laws which prescribe special duties to executive officers and those which do not. It is said the courts may compel the execution of the duties prescribed in the former, but not those prescribed in the latter. No such distinction is to be found in the Constitution. It is the duty of the President to "take care that the laws be faithfully executed," *special* laws as well as general; but no such duty is enjoined upon the judiciary. The means furnished the President to cause the execution of the special laws are more immediate and direct than those furnished him for the execution of the general laws. Does a special law require the head of a department to pay a sum of money? The officer whose peculiar province it is to execute the law is under the immediate eye of the President, holds office at his will, and may be removed if he refuses. So if the comptrollers, auditors, treasurer, register, commissioners of the Land Office, of Patents, of Pensions, of Indian Affairs, and the whole corps of executive officers at Washington.

And the same principle embraces all the executive officers throughout the Union. The executive power is *one*—one in principle, one in object. *Its object is the execution of the laws.* It is not susceptible of sub-divisions and nice distinctions, as to its duties and responsibilities. To execute the laws, and *all the laws*, are its duties; and it is responsible for their faithful performance. The practical exercise of executive power is more remote in cases which go before judicial tribunals; but it is the same in principle. The district attorneys hold their offices at the will of the President; as also do the marshals. It is not the behest of the judge which marshal executes, but *the law* passed by Congress, which the judge has

merely expounded and applied to the case. It is the *one* Executive power of the republic—the *President of the United States*—through an officer holding office at his will, which steps in to execute the law when the judge has declared what it is, and how it applies to the case. Laws which require no exposition, are executed *without the intervention of judicial power; laws which require exposition, are executed after that exposition has been given by the judicial power;* but in both cases the exposition is, or shall be, according to the Constitution, exclusively the work of the Executive.

Over cases where the law prescribes special duties to executive officers as such, in terms so plain as to admit of no exposition, their power does not extend. For instance, the law directs the President to cause $50,000 to be paid to a merchant whose ship has been bought for the naval service. Here no judge could expound the law more clearly than the Legislature has done it. The proper function of the judiciary cannot be called into requisition, because there is no point upon which it can constitutionally act.

Nothing is to be done *but to execute the law.* The President directs the fourth auditor to state an account; it is revised by the second comptroller. The Secretary of the Navy issues a requisition for a warrant; the Secretary of the Treasury issues a warrant, and the matter passes through the offices of the first comptroller, the register and treasurer. These officers are all made dependent on the will of the President, that through them he may *take care that all the laws are faithfully executed.*

Suppose one of them should be perverse and obstinate, and refuse to execute the law, what would be the appropriate remedy, and who should apply it? Could the merchant call upon the courts to interfere when no expounding of the law is requisite? Or would he rather apply to the President, whose sworn constitutional duty it is to "take care that the laws be faithfully executed?" Would he not request the President to issue *his* "mandamus" to his perverse subordinate, directing him to execute the law? and if he still refused, to remove him from office, and give his place to some one who would do his duty? The law would thus be executed, and the citizen obtain his rights.

But suppose he goes to the judiciary for their "mandamus," what will he ask them to do? Will he request the judge to *expound* the law for him? That is not necessary—it is clear enough already; all he wants is the *execution* of the law. Will he ask the judges to execute the law, or to "*take care that the law be faithfully executed?*" That is an executive function with which they have no right to interfere. Yet, what else is the object of a "mandamus" in such a case? What is it but an *executive* measure? What else but taking the duties of the President out of his hands? What else but an assumption of power which, by the Constitution, belongs exclusively to another independent department of the Government.

Let this doctrine be followed out, and to what will it lead? The Constitution makes it the duty of the President to "commission all the officers of the United States," and the laws impose upon him many specific, as well as general duties. The Heads of Departments have also many duties prescribed by law specially, as well as general. We have auditors to settle accounts, comptrollers to revise them, a treasurer to issue checks drawn upon warrants, a register to register accounts and warrants; Commissioners of the Land Office, of Patents, of Pensions, of Indian Affairs, all of whom have specific as well as general duties, and all of whom have heretofore looked up to the President as their common superior, the head of department to which they belong, to whom they are responsible, and whose duty it is to see that each of them faithfully executes the laws in his appropriate sphere. But this doctrine gives them a new superior—a superior above the President, the highest representative of the majesty of the people in this Government—a superior which, in theory, may consign them all, from the heads of departments down to the messengers in the offices, to the county jail, if they refuse to regard the mandate of the court in the performance of their executive functions. Any item in an account, any specific act required by law, whether general or special, which can, directly or indirectly, affect a private right, (and there can scarcely be an executive act required by law that does not,) may be made the subject of this supervisory power; and the effective and controlling Executive of this great Republic, will not be the Chief Magistrate elected by the people, but the three judges of the circuit court for the District of Columbia.

But which would be the most effectual in all such cases—the *order* of the President, or the *mandamus* of the judges? The President could at once accomplish the object by the obedience or removal of his subordinate. The judges have no effectual means of executing the law. They might imprison the executive officer, but they could [not] remove him. Imprisonment might not accomplish the object. The court could not guide his hand nor control his will. If he were conscientious in his refusal, or wished to appear so, no imprisonment, nor pains, nor penalties, could compel him to do an act which, in his opinion, violated his oath of office. The whole power of a court would be impotent to control an honest man. The inadequacy of the judicial process, and the ample power vested in the President, are conclusive proof that the President, and not the court, was intended to be the controlling authority in all such cases.

So far as regards their execution, no distinction is made by the Constitution between special acts and general acts, between private acts and public acts. It is the duty of the President to take care that *all alike* "be faithfully executed." The Executive is an *unity*. The framers of the Constitution had studied history too well to impose on their country a *divided Executive*. The Executive

power was vested in a *President*. The executive officers are his agents, for whom he is held responsible by the people, whose agent he is. The *acts of the executive officers* are the *acts of the President*. Constitutionally, he is as responsible for them as if they were done by himself, though not morally.

So far as regards the execution of the laws, therefore, no distinction can be maintained between the acts of the President, and those of his subordinate officers. In law, they are all the acts of the President. When the judiciary attempt to control those acts, they attempt to control the Executive power, to assume the functions of the President, to make themselves the Executive in the last resort, superior to the Executive created by the Constitution, and elected by the people.

Suppose the laws require a specific act of the *President himself*, involving private rights, which he refuses to perform. The courts have as much law for issuing a mandamus against *him*, as against any of his subordinates, in a like case. It is a "*case*" as much as that of which the court has already assumed jurisdiction. The President disobeys the mandamus, and they send an attachment. By whom do they send it? By a marshal holding his office at the will of the President, who can strike their process dead in his hands, by dismissing him upon the spot. This fact proves the absurdity of the power assumed. And that which the President can legally do to protect himself, he can do to protect any of his agents, being always responsible to his country for the proper exercise of his power.

But suppose the court succeed in arresting the President, and put him in the county jail, where, then, is the supreme executive power of this great Republic? Transferred from the President's House to the City Hall—from the Chief Magistrate, elected by the people of the whole United States, to the three judges of the District of Columbia.

The arrest and imprisonment of any executive officer as such, involves the same principles, and would lead to the same consequences in a greater or less degree, according to the importance of the station held by him. It is still an attempt to control the Executive power, not by confining its head, but by tying up its hands; or rather by forcing the hands to work, not according to the will of their constitutional head, but in obedience to the will of another department of the Government.

It is said that if the court has not this power, "an individual, who may have been ruined by the refusal of an officer to perform a ministerial act positively enjoined upon him by law, will be entirely without redress." If it were even so, would it justify the court in assuming executive authority in violation of the *the* Constitution? It would but prove a defect in our institutions which it would be incumbent on the people to repair. But it is not so. The idea that courts are the only places where wrongs of all sorts are to

be redressed, and judges the only dispensors of right, is an error. When the inferior executive officer, or even the President himself, refuses to perform his excutive duties, there is an obvious mode of redress, without the interposition of the judicial authority. If a subordinate executive officer "refuses to perform a ministerial act, positively enjoined upon him by law," the injured citizen may appeal to the President, whose duty it is to "take care that the laws be faithfully executed," and has power to turn out a perverse subordinate. If the case be so very plain, the President will at once enforce an execution of the law, and the citizen will have effectual redress, though "this court has not jurisdiction." If the case be not so very plain, the matter may be referred back to Congress, to make it plain by further legislation, and thus the citizen would have complete redress without the aid of the court. There is a process by which the President himself can be reached for a perverse refusal to execute the laws, or take care that they be executed, and a Chief Magistrate, who will do his duty, put in his place.

Thus are there ample means provided by the Constitution to enable the citizen to obtain his rights at the hands of the Executive, without erecting any court into a supreme controlling power over the President and the whole corps of executive officers. Indeed the court has not, in the Constitution and laws, the means to give redress in such cases. Before they can control the President, they must assume the power to appoint their own marshal and execute their own mandates. They must do more—they must proceed to the executive officers—must enter credits with their own hands—must issue warrants, and, finally, with their own hands, take the money out of the Treasury.

The very case before the courts illustrates the theory of the Constitution. The Postmaster General refused to execute a part of the solicitor's award, because he believed it contrary to law. Where did the relators first look for redress? Not to the court but to the President. The late President deemed the case a proper one for another application to Congress for further legislation, and refused to compel an execution of the award. The relators went to one House of Congress, and procured the passage of a resolution in their favor, but no legislation. The case was then again pressed upon the late President, whose views of it remained unchanged. It was afterwards pressed on the present President, who considered the disposition made of it by his predecessor as final, so far as the Executive was concerned, unless there should be further legislation. If the President, on either of these three occasions, had looked upon the law as clearly and imperatively commanding the payment of the money, he would have taken care to see it faithfully executed, and the relators would have had complete redress. If they had procured the passage of an explanatory act or joint resolution through both Houses of Congress, sustaining the construc-

tion of law, or requiring payment of the balance of the award, their redress would have been complete.

These obvious constitutional and legal measures were resorted to by them, and it is only when they fail to obtain the interpretation of legitimate authority, that they apply to a court to erect itself into a tribunal of appeal from another independent department of the Government.

Whether sound or not, the views here expressed are not peculiar. Mr. Jefferson and Mr. Madison acted upon them, when the former held the office of President and the latter that of Secretary of State. Mr. Jefferson has left on record his views of the case of Marbury vs. Madison, now relied on by the court to sustain their claim to jurisdiction in this case. The following is a letter addressed by him to George Hay, prosecuting attorney in the case of Aaron Burr, viz:

WASHINGTON, *June 2d*, 1807.

TO GEORGE HAY:

Dear Sir: While Burr's case is depending before the court, I will trouble you from time to time with what occurs to me. I observe the case of Marbury vs. Madison has been cited, and I think it material to stop, at the threshold, the citing that case as authority, and to have it denied to be law.

1. Because the judges, in the outset, disclaimed all cognisance of the case, although they then went on to say what would have been their opinion, had they had cognisance of it. This, then, was confessedly an extra-judicial opinion, and as such of no authority.

2d. Because, had it been judicially pronounced, it would have been against law; for, to a commission, a deed, a bond, *delivery* is essential to give validity. Until, therefore, the commission is delivered out of the hands of the Executive and his agents, it is not his deed; he may withhold or cancel it at pleasure, as he might his private deed in the same situation. The Constitution intended that the three great branches of the Government should be co-ordinate and independent of each other. As to acts, therefore, which are to be done by either, it has given no control to another branch. A judge, I presume, cannot sit on a bench without a commission, or a record of a commission; and the Constitution having given to the judiciary branches no means of compelling the Executive either to *deliver* a commission or to make a record of it, shows that it did not intend to give the judiciary that control over the Executive, but that it should remain in the power of the latter to do it or not. When different branches have to act in their respective lines, finally and without appeal, under any law, they may give to it different and opposite constructions. Thus, in the case of William Smith, the House of Representatives determined he was a citizen; and in the case of William Duane, (precisely the same in every material

circumstance,) the judges determined he was no citizen. In the case of Callender and others, the judges determined the sedition act was valid under the Constitution, and exercised their regular powers of sentencing them to fine and imprisonment; but the Executive determined that the sedition act was a nullity under the Constitution, and exercised his regular power of prohibiting the execution of the sentence, or rather of executing the real law, which protected the acts of the defendants. From these different constructions of the same act, by different branches, less mischief arises, than from giving to any one of them a control over the others. The Executive and Senate act on the construction that, until delivery from the Executive Department, a commission is in the possession and within their rightful power; and in cases of commissions not revokable at will, where, after the Senate's approbation and the President's signing and sealing, new information of the unfitness of the person has come to hand before the *delivery* of the commission, new nominations have been made and approved, and new commissions have issued.

"On this construction I have hitherto acted; on this I shall ever act, and maintain it with the powers of the Government against any control which may be attempted by the judges, in subversion of the independence of the Executive and Senate within their peculiar department. I presume, therefore, that in a case where our decision is by the Constitution the supreme one, and that which can be carried into effect, it is the constitutionally authoritative one, and that *that* by the judges was *coram non* judice, and unauthoritative, because it cannot be carried into effect. I have long wished for a proper occasion to *to* have the gratuitous opinion in Marbury vs. Madison brought before the public, and denounced as not law; and I think the present a fortunate one, because it occupies such a place in the public attention. I should be glad, therefore, if, in noticing that case, you could take occasion to express the determination of the Executive, that the doctrines of that case were given extra-judicially and against law—that then reverse will be rule of action with the Executive. If this opinion should not be your own, I wish it to be expressed merely as that of the Executive. If it is your own also, you would of course give to the argument such a development as a case incidental only might render proper.

I salute you with friendship and respect,

TH. JEFFERSON."

Mr. Jefferson was still President at the time the letter was written. He declares that "*the Constitution intended that the three great branches of the Government should be co-ordinate and independent of each other;*" that "*as to the acts which are to be done by either, it has given no control to another branch;*" that "*the doctrines of that case were given extra-judicially and against law;*" that "*their reverse will be the rule of action with the Executive,*" and that he would

"*maintain*" his construction of the Constitution "*with the* the *powers of the Government against any control which may be attempted by the judges, in subversion of the independence of the Executive.*" &c.

In a letter to Judge Roane, dated September 6th, 1819, Mr. Jefferson adverts to this case, and the principles involved in it, in the following terms, viz:

In the case of Marbury and Madison, the federal judges declared, that commissions signed and sealed by the President were valid, although not delivered.

"I deemed delivery essential to complete a deed which, as long as it remains in the hands of the party, is as yet no deed—it is *posse* only, but not *in esse;* and I withheld delivery of the commissions. *They cannot issue a mandamus to the President, or Legislature, or any of their officers, the Constitution controlling the common law in this particular.*"

Again, as late as June 12th, 1823, in a letter to Judge Johnson, Mr. Jefferson speaks thus of this case, viz:

"This practice of Judge Marshall, of travelling out of his case to describe what the law would be in a moot case, not before the court, is very irregular and very censurable. I recollect another instance, and the more particularly, perhaps, because it in some measure bore on myself. Among the midnight appointments of Mr. Adams, were commissions to some federal justices of the peace for Alexandria.

"These were signed and sealed by him, but not delivered. I found them on the table of the Department of State, on my entrance into office, and I forbade their delivery. Marbury, named in one of them, applied to the Supreme Court for a mandamus to the Secretary of State, (Mr. Madison,) to deliver the commission intended for him. The court determined at once that, being an original process, they had no cognisance of it; and then the question before them was ended. But the chief justice went on to lay down what the law would be, had they jurisdiction of the case, to wit: that they should award the delivery. The object was, clearly, to instruct any other court having the jurisdiction, what they should do if Marbury should apply to them.

"Besides the impropriety of this gratuitous interference, could any thing exceed the perversion of law? For, if there is any principle of law never yet contradicted, it is, that delivery is one of the essentials to the validity of a deed. Although signed and sealed, yet as long as it remains in the hands of the party himself, it is in *fieri* only; it is not a deed, and can be made so only by its delivery. In the hands of a third person it might be made an *escrow.* But whatever it is in the executive offices, is certainly deemed to be in the hands of the President; and, in this case, was actually in my hands, because, when I countermanded them, there was as yet no Secretary of State. Yet this case of Marbury and Madison is continually cited by bench and bar as if it were settled law, without

any animadversion of its being merely an *obiter* dissertation of the chief justice."

Mr. Jefferson even denied the power of the courts to compel the attendance of the President or heads of departments as witnesses in suits at law or criminal prosecutions at whatever distance, on the ground that their constitutional duties in the service of the people of the United States were paramount to all others. When, in the case of Smith and Ogden, in New York, a *subpœna* was issued to some of the heads of departments, they were directed by him to attend to their official duties and disregard it. When the order of the President was stated in court as the ground of disobedience, a motion was made for an attachment on the ground that it was insufficient, but the motion failed upon an equal division of the court.

In the case of Aaron Burr, a *subpœna* was issued by the court for the President himself, which he disregarded and returned. The following are his remarks upon it, in letters to the District Attorney, viz:

"The leading principle of our Constitution is the independence of the Legislature, Executive, and Judiciary of each other, and none are more jealous of this than the Judiciary. But, would the Executive be independent of the Judiciary, if he were subject to the *commands* of the latter, and to imprisonment for disobedience, if the several courts should bandy him from pillar to post; keep him constantly trudging from north to south, from east to west, and withdraw him entirely from his constitutional duties; and the intention of the Constitution, that each branch should be independent of the other, is further manifested by the means it has furnished to each to protect itself from enterprises of force attempted on them by the others, and to none has it given more effectual and diversified means than to the Executive."

I received late last night your favour of the day before, and now re-enclose you the subpœna, as I do not believe that the district courts have a power of commanding the Executive government to abandon superior duties and attend on them, at whatever distance. I am unwilling, by any notice of the *subpœna*, to set a precedent which might sanction a proceeding so preposterous."

If the courts cannot take the executive officers from their public duties, even to testify in court in criminal cases, much less can they, at the instance of citizens in pursuit of private rights, subject them to mandamus and attachment.

These authorities are sufficient to show that the doctrine laid down by the chief justice, in the case of Marbury vs. Madison, never was recognised as law by the executive authority. They will also screen the undersigned from the imputation of assuming any new ground, when he doubts whether this court, or any other, can "issue a mandamus to the President or Legislature, or *any of their officers*—the Constitution controlling the common law in this particular."

All this reasoning and these deductions, the undersigned begs, may be understood as applicable sólely to the public character and acts of executive officers, and not to their character as citizens, or to their private transactions.

Second Reason.

If, according to the Constitution, the circuit court for the District of Columbia might be clothed by law to issue a mandamus in such a case, no such power has been conferred upon them by the act of Congress.

The undersigned is spared the labor of investigating and illustrating this position by the clear, and he thinks, conclusive opinion of the Attorney General, which he transmits herewith, and requests that it may be considered a part of this letter, (copied in page 331.)

That opinion reviews the opinion of the circuit court, as delivered by Chief Justice Cranch, and published in the National Intelligencer, and maintains the following positions:

1. That the argument of the court, in favor of the jurisdiction claimed by them, is founded on inferences from the language of Judge Johnson, in the case of McIntyre vs. Wood, which inferences were repudiated by the same judge, and by the judgment of the court in a subsequent case.

2. That there is no substantial difference between the words of the Judiciary act of 1789, which the Supreme Court have twice decided do *not* give the other circuit courts power to issue a mandamus to an executive officer, and the words of the 5th section of the act concerning the District of Columbia, on which the circuit courts rely; and that the jurisdiction of the latter is, therefore, in this respect, no greater than that of the other courts.

3. That no power is to be derived from the act of the 13th February, 1801, because that act was repealed in 1802, without any exception as to the circuit court of this District.

4. That even if the act of Congress, concerning this court, had given to it, in express terms, a jurisdiction to issue writs of mandamus to an executive officer, to compel him to perform an official act, no such jurisdiction could be exercised consistently with the provisions of the Constitution, because such a jurisdiction would be substantially an exercise of executive power, which cannot be taken from the President, in whom the Constitution has vested it.

5. That the Postmaster General is an executive officer, and equally independent with the other heads of departments of any control in the exercise of his official duties by the Judiciary.

Third Reason.

If, by the Constitution, Congress can clothe the courts with authority to issue writs of mandamus against executive officers as such; and if they have vested the general power in this court by law, this is not a case in which that power can be lawfully exercised.

1. It seems to be conceded that a writ of mandamus will not be to compel any one to do an act, in relation to the performance of which he has any discretion; and to bring this case with that principle, the court say, "the duty of the Postmaster General, under that act, is clear and absolute, leaving him no discretion." Is this so?

The act does not require the Postmaster General to credit or pay any specific amount. It does not absolutely require him to do any specific act whatever. Whether he would be called upon to credit much or little, or nothing at all, was altogether contingent, depending on the solicitor's award. It was not like a law directing specifically and absolutely the payment of a sum of money, or the performance of a ministerial act, when the law is the only guide. It was necessary for him, in this case, to look at the law and at the solicitor's award. Of necessity, he must compare them together, to ascertain what it was his duty to do.

Now, in making that comparison and acting upon the result, has he no discretion? The authority of the solicitor, by the words of the law, was to settle and adjust the "claims of relators for 'extra services' under certain contracts made with them by W. T. Barry," &c., to enquire into and determine the equity of their claims *for, or on account of, any contract,*" with the said Postmaster General, "on which their pay had been suspended by the *present Postmaster General,*" and to make them such allowances, &c. The duty of the Postmaster General is prescribed in the following words:

And that the Postmaster General be, and he is hereby, directed to credit such mail contractors with whatever sums of money, if any, the said solicitor shall so decide to be due to them "*for or on account of any such service or contract.*"

The Postmaster General was not required to credit the contractors with *all the solicitor might award to them*, but only so much as he might decide to be due, "*for or on account of such service or contract.*" What "service or contract?"

Why, the "service or contract" described in the preceding part of the act "*extra service,*" a "contract" *with Mr. Barry*—a contract "*on which the pay had been suspended by the present Postmaster General.*" It is such allowances, and such only, that the Postmaster General is directed to credit.

Has he no power to examine and decide whether the allowances are of this character or not? Must he not see whether they are for, or on account of, any such service or contract, or not? If he have no power to look into that point, why are the words attached to the sentence which prescribe his duty? Why was he not directed absolutely to credit "*whatever sums of money, if any, the solicitor shall decide to be due to them?*" But one answer can be given. It was the purpose of Congress to limit the power of the Postmaster General to *credit and pay*, as well as that of the solicitor *to allow;* and, after defining the claims which the latter was authorized to allow,

they limited, to the same claims, the power of the former to pay. He was directed to pay the sums allowed "for, or on account of, any such service or contract," and nothing more.

Again: there are several provisoes to the act limiting the power of the solicitor. One of them is as follows: "Provided, the said solicitor is not authorized to make any allowance for any suspension, or withholding of money as aforesaid, for allowances or overpayments made, as aforesaid, on the route from Baltimore to Washington, under the contract of 1827." If, instead of 1827, the year 1831 had been used in this proviso, it would have covered a part of the allowances embraced in the award. Had it done so, and had the award embraced that or any other allowance prohibited by the provisoes, would it not have been the duty of the Postmaster General to refuse the credit and payment? It cannot be doubted. But how could he ascertain whether the allowance was prohibited by the proviso or not? Could he do it in any other way than by examining the allowance, and comparing it with the proviso? If, in his opinion, it were prohibited, he would refuse to pay it; if not, he would pay it. And is there not *discretion* here? May he not pay, or refuse to pay, according to his opinion of the power of the solicitor to make the allowance?

On these points there can be no doubt that the Postmaster General *has a discretion.* But what is the difference between his right to determine whether the solicitor has transcended his power on specific points, or in his award generally? Had he not a discretion to refuse to pay the whole award, or any part of it, if he honestly believed it contrary to law? If, on looking at the law and the award, he found that the solicitor had departed from his authority altogether, it cannot be doubted that he had a right under the law, and that it would have been his duty, to decline carrying it into effect.

This is not a case, therefore, where a specific duty is enjoined by law, in the performance of which there is no discretion; such as the payment of a definite sum of money, the registering of a certificate, or the recording of a patent; and, consequently, it is not a proper case for a mandamus.

It seems to be conceded that, under existing laws, a writ of mandamus can be issued by a court only as a means of *exercising* its jurisdiction, and not for the purpose of *obtaining* jurisdiction.

Let us apply the principle to this case. The jurisdiction of every court must be original or appellate. Original jurisdiction is where, by authority of the Constitution and laws, proceedings are originated in the court in the first instance; appellate jurisdiction is where, by authority of the same Constitution and laws, a case is taken out of a lower tribunal into a higher, with a view to the revision of the proceedings of an inferior court.

In this case, the circuit of the District had no original jurisdiction to adjudicate upon the claims of the contractors. There was no mode known to the laws by which they could prosecute those claims

in any court whatsoever; Congress created a special tribunal for that purpose; they made the Solicitor of the Treasury a chancellor for the special object, and clothed him with power to take evidence, and adjudicate upon the claims of the contractors. No other court on earth could entertain this case. Nor was any appeal from the decision of this special court provided for by the law which created it. Neither the circuit court of this District, nor the Supreme Court of the United States, nor any other judicial tribunal, had power to bring up the case from the Solicitor of the Treasury, either before or after his award, and revise his proceedings.

No judge could take from, or add to, the amount of his award; nor has any judge the legal power to say whether that officer decided according to law or against law. The solicitor's power, in this case, was equal to that conferred on the Supreme Court of the United States, in cases subjected to its jurisdiction, and *above* that of the circuit court of the District of Columbia, from which there is an appeal. The solicitor had as much power, under the law which gave him jurisdiction, to issue a mandamus to bring before him, for consideration or revision, a case acted on in the district court, or the Supreme Court, as either of them has to issue a mandamus to bring before them, for consideration or revision, a case decided in his court; and he has as much right to interpose by a mandamus, to execute their judgment, as they his.

How, then, do the circuit court get jurisdiction in this case? Not by the law, for the law gives them none, either original or appellate. They obtained it by the mandamus, and by that only.

Is it said that they do not claim jurisdiction to inquire into, and revise, the solicitor's award? What, then, does their jurisdiction amount to? What "case" is this, when the jurisdiction is not to inquire into, revise, to adjudge, but merely to execute? In the ordinary routine of judicial proceeding the "case" comes first, the "suit" follows, and "*judgment*" closes the rear. Then it is not a "*case*," nor a "*suit*," of which the court takes cognisance, but a "judgment." It is the judgment and award of another independent court, upon the proceedings of which the law gives neither resort nor appeal to the district court.

And if the court do not intend to look into the award of the solicitor, to ascertain whether it be according to law, or against law, what do they mean by calling upon the Postmaster General to give his reasons for not carrying it into execution? If they mean any thing by such a call, it must be that they will *consider* the reasons which may be adduced by him, and *decide* whether they be sufficient or not. Suppose the Postmaster General were to allege, that the solicitor had considered and allowed claims which he was not authorized to allow by the act of Congress from which he derived his authority. If this were true, it would certainly be a good reason for not paying the award. But could the circuit court *inquire into their truth?* Whence do they derive the power to inquire, or decide, whether

the solicitor allowed too much or too little? Whether he adhered to the law, or transcended the law? Whether he awarded to the claimants a just compensation for services actually rendered, or heaped upon them tens and hundreds of thousands, without shadow of contracts, or pretence of service? Nothing would seem more plain, than that the court have no power to call for books and papers, or summon witnesses, or consider statements, with a view of deciding whether the awards of the solicitor be right or wrong. If they have no such power, it is palpable that they cannot make any examinations, and come to any decision, which can exonerate the Postmaster General from executing the award, however illegal or monstrous may be the allowance which it sanctions.

Is not this absence of power, to *consider* that which may be a good reason for the Postmaster General's refusal to execute the award, the strongest possible proof that the court have no authority to institute their present proceedings? It will be admitted by all, that if the Postmaster General could show that the award was illegal or corrupt, it would be a good excuse for not carrying it into effect, until it could be revised by some superior tribunal. But this court, not being clothed by law with power to consider those points, has no authority to judge the legality or unreasonableness of the Postmaster General's excuses, although they may be such as not only to justify him, but to entitle him to commendation.

No man will deny that cases may and do arise in which an executive officer is perfectly justifiable in refusing to perform a specific act required of him by law. In these cases he is responsible to his superior and to Congress, but not to the courts. If the Postmaster General were directed by express law to pay $50,000 to a contractor, and should, before doing so, discover that the passage of the act of Congress had been procured by false and fabricated testimony, it would be his duty to refuse payment until the whole subject could be again brought under the revision of Congress; yet the law might be plain and peremptory in its terms, leaving him no discretion. Must not this court, upon the principles laid down by them, grant a mandamus to the claimant? Could they, in such a proceeding, inquire into and revise the act of Congress, or would they peremptorily order and forcibly compel the Postmaster General to execute the law, the fraud notwithstanding? If he had no "discretion," and they no power of revision, such must be their decision.

Hence it is inferred, that the court has no jurisdiction in this case in law, and can only obtain what they may exercise by their mandamus—a proof that a writ of mandamus will not lie in such a case.

Fourth reason.

The court have ordered the Postmaster General to perform a legal impossibility.

A mandamus is a command to do a specific act. The specific act ordered to be done in this case is to credit the relators with the

full amount of the solicitor's award. A credit can only be given by an entry upon some book, in which their accounts are lawfully kept.

No accounts are kept with contractors in the Post office Department, nor has the Postmaster General the custody or control of the books in which they are kept. All the accounts of the Post Office Department are kept in the Treasury Department, by the auditor, created for that purpose by the act of July 2d, 1836. That officer is appointed by the President and Senate; and so far is he from being dependant on the Postmaster General, that his clerks are appointed by the Secretary of the Treasury. To this office have been transferred, long since, all the accounts, and the books connected with them, formerly kept by the Postmaster General.

By adverting to the fact that the act for the relief of Messrs. Stockton and Stokes, &c., and that to change the organization of the Post Office Department, passed on the same day, the occasion of this practical discrepancy between them will be understood. The former was drawn with reference to the organization of the department at the time of its introduction into Congress. Then the Postmaster General kept the accounts, and the entries in the books were *his* entries. He had the legal power and authority to give a credit to the contractors in this case; but this power and authority was taken from him by another act on the same day the act for their relief passed. That the act now in question was not altered so as to accommodate it to the change, and require the credit to be given by the new auditor instead of the Postmaster General, was doubtless an inadvertence; but it is one which the legislative authority alone can correct. As the law stands, the Postmaster General has just as much authority to make entries in the books of the second, third, and fourth auditors, as he has in those of the auditor created by the act of 1836.

Hence the court will perceive that they have ordered the Postmaster General to do that which he cannot lawfully do—to enter a credit or credits on books of which he has neither the custody or control.

These views the undersigned submits to the court with much confidence in their soundness. He thinks it is shown:

1. That it is the function of the Executive "to take care that the laws," special as well as general, "be faithfully executed," and that of the judiciary to expound such as require it; that to the President of the United States, and not to the courts of justice, belongs the duty of controlling and directing all executive officers in the performance of their official duties; and that when the courts interpose to control them they assume an executive function, invade the province of the President, and subvert the constitutional assignment of powers.

2. That Congress have not conferred, or attempted to confer, on the circuit court of the District of Columbia, authority to issue a

writ of mandamus for the purpose of controlling executive officers in the performance of their duties, whether general or specific; that the Postmaster General is an executive officer; that, in a matter upon which this proceeding has originated, he has acted in that capacity; and that he is not lawfully controllable therein by a writ of mandamus.

3. That, in the case before the court, the Postmaster General had a clear and undoubted discretion, in the exercise of which he is amenable to no judicial tribunal; and that the court, having no jurisdiction of the matter in question, either original or appellate, cannot lawfully court and obtain it by a mandamus.

4. That the court have ordered the Postmaster General to do that which he has no lawful power to do, not having official custody or control of the books in which the credits are commanded to be entered.

In addition to these persuasive considerations, it cannot be forgotten that the power now asserted has been slumbering from the birth of the Constitution, and now, almost half a century from the organization of the Government, is for the first time called into requisition. How was it that Marbury, after his right to his commission was so strongly asserted by the Supreme Court, did not bethink himself of a resort for redress to the circuit court for the District of Columbia? Why is it that the numberless claimants, whose accounts have been rejected at the Treasury, though asserted by them to be clearly warranted by law, have not applied to this court for its mandamus to compel the auditors and register to give them credit upon their books? Why did not the Bank of the United States, instead of agitating the country, and thundering in the Capitol, apply to this court for its mandamus to compel the Secretary of the Treasury to restore the public deposites, which, it was alleged, had been removed from it in contempt of law and in violation of the Constitution? Have none of these occasions been sufficient to rouse this giant power from its enduring slumber? Are its mighty arms to be flung aloft for the first time in vindication of post office extra allowances, of doubtful legality and undoubted enormity, which have already been denounced by Congress and contemned by the nation?

The undersigned desists from a theme on which it is not pleasant to dwell. It has been his studied effort to avoid, as far as possible, expressions calculated to wound sensibility or create excitement. The voice of reason alone is worthy of a subject so comprehensive and so grave. If a sentence or a word is to be found in this paper which can justly be construed as disrespectful to the court, or personally reproachful to any one, it has escaped through inadvertence, and conveys a meaning which was not intended.

AMOS KENDALL,
Postmaster General.

June 24th, 1834.

Opinion of Attorney General of U. S.

Opinion of the Attorney General of the United States, referred to in defendant's answer, page 314.

ATTORNEY GENERAL'S OFFICE,
June 19th, 1837.

SIR: I have had the honor to receive your letter of the 7th inst., enclosing a printed copy of the opinion delivered by the chief judge of the circuit court of the District of Columbia for the county of Washington, upon the application of William B. Stokes and others for a writ of mandamus, to be directed to the Postmaster General of the United States, and requesting me to examine it and inform you whether I find any thing therein to change the opinion heretofore expressed by me relative to the jurisdiction of the court over the matter in question.

Pursuant to this request, I have examined the papers referred to me with the attention and respect due to its author, and to the court of which he is the organ; but, after the fullest consideration which I have been able to give to the arguments contained in it, I shall adhere to the opinion, that the court had no power to issue the writ in question.

The case proposed by you, in your communication of the 29th ultimo, and now presented, relates to the power of the circuit court of this District to issue a *mandamus* to the Postmaster General, an *executive officer of the United States*, for the purpose of compelling him to perform an official act, alleged to have been enjoined on him by a special act of Congress, passed for the relief of the parties applying for the writ. This act treats exclusively of certain claims depending in the Post Office Department, and growing out of contracts with the department. It refers those claims to the Solicitor of the Treasury for settlement, and it directs the Postmaster General to credit the contractors with whatever sum of money, if any, the solicitor shall decide to be due to them. The duty imposed by this law is, therefore, in every sense, an official duty; it relates to the business of his department; it is imposed on him by his name of office.

The Solicitor of the Treasury has made an award, by which he decides that certain sums of money are due to the contractors, and the Postmaster General has credited them with a part of these sums; but, for reasons satisfactory to his own judgment and sense of duty, has refused to credit the balance, until directed so to do by a further act of Congress. The contractors have applied to the late President of the United States to take order, by virtue of his constitutional duty, to see the laws faithfully executed for crediting the balance: *but being satisfied with the course of the* Postmaster General, he declined making any such order, and referred the parties to Congress for further legislative direction.

The like application has been made to the present Chief Magistrate, who deemed it inexpedient to interfere with the disposition of the subject made by his predecessor; and the parties now apply to the circuit court of this District for an order, in the form of a writ of a *mandamus*, to the Postmaster General, to credit and pay the balance of the solicitor's award, on the ground that this is a mere ministerial act, to the performance of which the applicants have a fixed legal right under the act of Congress, as it now stands, and for which they have no other adequate legal remedy. The court has so far adopted these views as to issue an alternative mandamus, commanding the Postmaster General to give the *credit* applied for, or to show cause why he has not done so; but it has reserved the question, whether the *mandamus* shall issue to command the *payment* of the balance for further consideration, when the result of the first writ shall have been ascertained.

In my former communication, it was shown that, according to the decisions of the Supreme Court of the United States, in the case of McIntyre vs. Wood, (7 Cranch, 504,) and McClung vs. Silliman, (6 Wheaton, 598,) the circuit courts of the United States, out of the District of Columbia, have no jurisdiction, under the laws now in force, to issue a writ of mandamus to an officer of the Executive Departments; and the opinion was expressed, that the acts of Congress, organizing the circuit court of this District, and regulating its jurisdiction, though they conferred some powers not delegated to the other circuit courts, did not, in express terms, or by any general grant of power, authorize it to issue a writ of mandamus to an executive officer of the United States, and, therefore, that its jurisdiction, in this respect, was the same with that of the other circuit courts.

The character and effect of the decision referred to, as to the other circuit courts, and the necessity of proving, before the writ applied for can be issued by the circuit court of this District, that Congress have conferred on it a jurisdiction, in this particular, not possessed by those courts, *and* fully admitted in the opinion before me; and the court would doubtless have come to the like conclusion with me, had it taken the like view of the acts of Congress regulating its jurisdiction. The opinion maintains, that the power and jurisdiction conferred on this court are much more comprehensive than those possessed by other circuit courts, and sufficiently so to include the power in question. To establish this, a comparison is instituted between the acts of Congress relative to these courts; and the result of this comparison, aided by inferences and reasonings thereon, drawn from the language of the Supreme Court in the cases referred to, is supposed to be in favor of the jurisdiction claimed by this court.

The result, in my opinion, is directly the reverse. The power and jurisdiction of the ordi. circuit courts of the United States, so far as regards this subject, depends on the following clauses of the 11th and 14th sections of the Judiciary act of 1789.

The 11th section provides, "that the circuit courts shall have original cognisance, concurrent with the courts of the several States, of all *suits* of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and the United States are plaintiffs or petitioners, or an alien is a party, or the dispute is between the citizen of a State, where the suit is brought, and a citizen of another State."

The 14th section enacts, "that all the before mentioned courts of the United States shall have power to issue writs of *scire facias*, *habeas corpus*, and all *other writs*, not specially provided for by statute, *which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law.*"

On these provisions, the Supreme Court held, in the case of *McIntyre vs. Wood*, (7 Cranch, 504,) that the circuit court of Ohio did not possess the powers to issue a *mandamus* to the Register of the Land Office. The power of the circuit courts, under the general words of the 14th section, to issue writs of *mandamus* in some cases, was not denied; but it was held that the power was confined, exclusively, to cases in which the writ might "*be necessary to the exercise of their jurisdiction.*" By this was meant, as explained in the subsequent case of McClung vs. Silliman, (6 Wheaton, 598,) that the mandamus can only be issued "in cases where the jurisdiction *already exists*, and not when it is to be *courted or acquired by means of the writ proposed to be sued out.*"

The powers and jurisdiction of the circuit court of the District of Columbia, so far as regards the present question, *and* conferred by the 3d and 5th sections of the act "concerning the District of Columbia," approved February 29th, 1801. The material part of the 3d section is as follows: That there shall be a court in the said District, which shall be called the circuit court of the District of Columbia, and the said court, and the judges thereof, shall have all the powers vested in the circuit courts and the judges of the circuit courts of the United States.

The 5th section is in the following words:

"That the said court (the circuit court of the District of Columbia) shall have cognisance of all crimes and offences committed within the said District, and of all cases in law and equity between parties, both or either of which shall be resident, or shall be found within the said District; and also of all actions or suits of a civil nature, at common law or in equity, in which the United States shall be plaintiffs or complainants; and of all seizures on land or water, and all penalties and forfeitures made, arising or accruing under the laws of the United States."

On the latter of these sections, (the 5th,) Judge Cranch holds, that it confers on the circuit court of the District of Columbia a jurisdiction not given to the other circuit courts, which may be enforced by the writ of *mandamus*, whenever such a writ is necessary

to the exercise of that jurisdiction. This view of the case appears to have been suggested by the following remarks of Mr. Justice Johnson, in the case of McIntyre vs. Wood: "Had the 11th section of the judiciary act covered the *whole ground of the Constitution*, there would be much reason for exercising this power, (the power of issuing writs of mandamus,) in many cases wherein some ministerial act is necessary to the completion of an individual right, arising under the laws of the United States; and the 14th section of the same act would sanction the issuing of the writ for such a purpose." "But although the judicial power of the United States extends to cases arising under the laws of the United States, the legislature have not thought proper to delegate the exercise of that power to its circuit courts, except in certain special cases."

In order to bring the case within these remarks, Judge Cranch argues that the 5th section, above quoted, *has covered the whole ground of the Constitution of the United States*, and much more, except as to certain cases not material to the present discussion; and that, with such exception, the circuit court of the District of Columbia has cognisance of *all cases* in law and equity, *whether arising under the Constitution or laws of the United States*, or under the adopted laws of Virginia or Maryland, *with the only condition that one of the parties shall be resident or found within the District*, and that the circuit court of the District of Columbia is therefore "*in that condition*," of which Mr. Justice Johnson speaks. He also argues, chiefly on the authority of a part of the opinion of Chief Justice Marshall, in the noted case of Marbury vs. Madison, (1 Cranch, 163,) that the act of Congress, for the relief of the relators, directs the performance, by the Postmaster General, of a mere *ministerial* act; that the right of the relators, and the obligation of the Postmaster General, are clear and absolute; that the refusal of the latter to perform the act makes a *case* in law of which the court has jurisdiction; that the only appropriate remedy is by writ of mandamus; that this writ is therefore necessary to the exercise of the jurisdiction of the court, and that the court has not only the power, but is bound to issue it.

The whole of this argument rests on the assumption that, if the grant of jurisdiction covers the whole ground of the Constitution, it will include the power to issue a writ of mandamus to an executive officer, commanding the performance of an official act, provided the court shall be of opinion that such act is merely *ministerial* in its nature, an assumption inferred by the court from the above quoted remarks of Judge Johnson. I shall hereafter have occasion to show, that the existence of such jurisdiction, in any of the courts, is incompatible with the distribution of the powers of Government made by the Constitution, and with the separate and independent authority vested by it in the President. But before entering on that subject, some objections of a minor, but perhaps not less decisive nature, may be mentioned.

1. The above quoted observation of Mr. Justice Johnson was not necessary to the decision of the case of McIntyre vs. Wood; and the use now made of it by the circuit court appears to be repugnant to the opinion of the same judge in the case of McClung vs. Silliman, and to the judgment rendered in the latter case. The existence of this objection is fully admitted by Chief Justice Cranch in the following remarks:

"But although we have shown, as we think, that even under the opinion of the Supreme Court, in McIntyre vs. Wood, this court has power to issue a writ of *mandamus* in the present case, yet it may be possibly objected that our argument is founded upon influence drawn from the language of that opinion, which influence Mr. Justice Johnson, in the case of McClung vs. Silliman, (6 Wheaton, 598,) repudiates." Let us see how the objection is gotten over.

In the first place, it is suggested that "the only point *decided* in the case of McClung vs. Silliman was, that a State court cannot issue a mandamus to an officer of the United States;" and the remarks of Judge Johnson, repudiating the influence referred to, are therefore treated as unnecessary to the decision of the cause. If this were so, it might still be replied that the obiter remarks of the judge, who delivered the opinion of the court, repudiating influences drawn from *obiter* remarks of the same judge in a former case, are abundantly sufficient to meet an argument founded on such influences. But I think it will be seen, on comparing Judge Johnson's statement of the facts with the subsequent parts of his opinion, that the case presented another point, which directly called for the remarks in question.

Mr. Justice Johnson says: "The plaintiff in error, who was also the plaintiff below, supposes himself entitled to a pre-emption interest in a tract of land in the State of Ohio, and claims of the Register of the Land Office of the United States the legal acts and documents upon which such rights are initiated. The officer refuses, under the idea that the right is already legally vested in another, and that he possesses himself no power over the subject in controversy. A mandamus is then moved for in the circuit court of the United States, and that court decides that Congress has vested it with no such controlling power over the acts of ministerial officers in the given case. The same application is then preferred to the State court, for county, in which the subject of controversy is situated. The State court sustains its own jurisdiction over the Register of the Land Office, but, on a view of the merits of the claim, dismisses the motion. *From both these decisions* appeals are made to this court in form of a writ of error."

He then refers to the decision in McIntyre vs. Wood. Says the influence of that decision on the *cases* then before the court is resisted, on the ground that it did not then appear that the controversy was between parties who, under the *description of person*, were entitled to sue in the circuit court of the United States; and

that "it is now contended, that as the parties to this controversy are competent to sue under the 11th section, *being citizens of different States*, "that this is a case within the provisions of the 14th section, and the circuit court was vested with power to issue this writ under the description of a writ specially provided for by statute, but 'necessary' for the exercise of its jurisdiction."

It thus appears that, besides the question concerning the power of the State court, the question whether the circuit court of the United States, for the State of Ohio, could issue a mandamus to a Register of the Land Office, to decide conflicting claims to a certificate of purchase, one claimant being a citizen of Ohio, and the other a citizen of another State, was also submitted for decision.

The argument of the plaintiff's counsel in support of such a jurisdiction, like that of the circuit court of this District in the present case, was founded on inferences drawn from the language held by Judge Johnson in the case of McIntyre vs. Wood. The judge notices it at length, rejects the inferences on which it rested, and thus disposes of that part of the case which related to the proceeding before the circuit court.

Another answer to the anticipated objection is, that the circuit court of this District "has cognisance *of all cases in law and equity*, however arising between parties, both or either of which are resident, or found within the District;" a position constantly insisted on in the opinion, and which I propose to examine under the next head.

2. Admitting, for the sake of argument, that the construction given to the language of Judge Johnson, in the cases referred to, is the correct one, and that the argument founded on it is sound in principle, still the present case cannot be distinguished from those decided by the Supreme Court, because there is no essential difference between the 5th section of the act *of* "concerning the District of Columbia," on which the circuit court relies for its claim of jurisdiction over *all cases* in law and equity, *however arising*, and the 11th section of the judiciary act of 1789, which prescribes the jurisdiction of the other courts. The material words of the 5th section, omitting other classes of cases, are, that the circuit court of this District shall have cognisance "*of all cases in law or equity between parties, both or either of which shall be resident, or shall be found within the said District.*"

Those of the 11th section, omitting value and alternative cases, are, that the circuit courts of the United States shall have cognisance of all suits of *a civil nature, at common law or in equity, where the dispute is between a citizen of the State where the suit is brought and a citizen of another State.*"

Except that, in the other circuit courts, it is requisite that the one party should be a citizen of the State where the suit is brought, and the other party a citizen of another State; and that in this District it will be sufficient, if either of the parties be residents or found

here; there would seem to be no substantial difference between the two provisions. Indeed, unless the phrase "all cases in law and equity," used in the one case, means something different from "all *suits of a civil nature*, at common law or in equity," used in the other, it is certain that there can be no such difference, and, consequently, that the power and jurisdiction of the circuit court of this district, in regard to the writ of mandamus, so far as depends on the fifth section above quoted, are precisely the same with those of the other circuit courts.

It may be inferred, from the opinion of the circuit court, that the former of those phrases was supposed to mean something more comprehensive than the other, and so much more so *as to cover the whole ground of the Constitution*, which it was adjudged, in *McIntyre vs. Wood*, that the other phrase did not do. No reason is very distinctly assigned for this distinction; but it appears to rest on the use of the word "*cases*" in that clause of the Constitution which provides that the judicial powers of the United States "shall extend to all *cases* in law and equity, under the Constitution and laws of the United States," &c. But, according to the Supreme Court of the United States, and to the opinion of other expositors of the Constitution, the word "*case*" in this section means nothing more nor less than the word "*suit*." Mr. Justice Story, in his commentaries, (vol. III, p. 507,) in answer to the inquiry, what constitutes a *case*, within the meaning of the clause, remarks that, "a case, in the sense of this clause, arises when some subject touching the Constitution, laws, or treaties of the United States, is submitted to the courts by a party who asserts his rights in a form prescribed by law. In other words, a case is a *suit* in law or equity, instituted according to the regular course of judicial proceedings, and, when it involves any question arising under the Constitution, laws, or treaties of the United States, it is within the judicial power confided to the Union;" and for this he cites the decisions of the Supreme Court and other authorities. On the other hand, the Supreme Court held, in 2 Peters, 464, that the word "*suit*," used in the 25th section of the Judiciary act, applies to any proceeding in a court of justice, by which an individual pursues that remedy in a court of justice which the law allows him. It seems, therefore, to be settled, that the words are substantially convertible terms—the one referring to the *subject matter* of judicial proceeding, and the other to the proceedings on such subject matter.

The words of the two acts being substantially the same, can there be any difference in their legal effect? And if the words used in the 11th section of the act of 1789 *do not cover the whole ground of the Constitution*, and, therefore, *do not authorize* the issuing a mandamus to an executive officer of the United States as an original remedy, as has been adjudged by the Supreme Court, how, without overruling the decision of that court, can words of precisely the same import, in the 5th section of the act of 1801, be held *to cover the whole ground*, and to authorize the issuing of such a writ?

It may be admitted that, under the words above quoted from the 5th section, taken in connexion with the first section of the same act, which declares that the laws of Virginia and Maryland, as they existed at the date of the act, *shall continue and be in force* in the parts of the District ceded by those States respectively, the court may lawfully issue writs of *mandamus*, even as original process, in all cases arising between individuals, both or either of whom are resident, or may be found within the district in which, by the law of Virginia or of Maryland, as the case may be, such writs could be issued. If this be so, as I incline to think it is, it is because this remedy existed as a part of the adopted local law, which is declared to remain in force, and to which, for the purpose of this remedy, the jurisdiction of the circuit court is attached. But it is impossible to acquire any such jurisdiction in this way over the officers of the United States in their official capacities, because, in those capacities, they were never subject to the laws of Virginia or Maryland; nor did those laws even include, nor could they confer, any jurisdiction over them, by mandamus or otherwise.

Officers of the United States cannot sue in their names of office, except when expressly authorized so to do by act of Congress; and the like legislative provision is necessary to render them liable, in their official capacities, to the process of the courts. No such provision is found in the act concerning the District of Columbia.

It is also worthy of remark that, notwithstanding the strong opinion of Chief Justice Marshall, in favor of the right of the applicant to a remedy by *mandamus* in any court possessing jurisdiction, no proceeding in the circuit court of this District appears to have been instituted, or to have been thought [of] by the parties or their counsel, though the court then possessed precisely the same power in this respect which it possesses now, and though all the parties were residents of the District. This omission, under all the circumstances, proves very clearly, that the jurisdiction now claimed was not then supposed to exist. Instances have, no doubt, frequently occurred since that period, in which individuals have deemed themselves aggrieved by the action of the executive officers in cases affecting the rights of such individuals; but this appears to be the first application ever made to the circuit court of the District for a remedy by mandamus. After the most careful examination of the various provisions of the act of 1801, "concerning the District of Columbia," I find nothing in the provisions to authorize the application of such a remedy.

3. In a subsequent part of the opinion, the claim of jurisdiction is defended on another ground; "our powers," say the court, "are given by the 3d, and our *jurisdiction* by the 5th, section of the act of the 27th February, 1801;" and after quoting the 3d section, (copied above,) the opinion suggests, that the only circuit courts, and judges of the circuit court, existing when the act of the 27th February, 1801, was passed, were those ordained and established

by the act of Congress of the 13th February, 1801; and that the 10th and 11th sections of that act were far more comprehensive than the act of 1789, organizing the former circuit courts, and covered the whole ground of the Constitution; and that, if they had been in full force when the case of McIntyre vs. Wood arose, the decision in that case would probably have been different. And the proposition is advanced that, "although the act of February 13th, 1801, was repealed by the act of 1802, *yet the appeal did not, in any manner, affect the power or jurisdiction of the court, given by the act of the 27th February*, 1801."

From the subordinate place assigned to this argument, it does not seem to be much relied on by the court, and, in my judgment, it is wholly untenable. It is true that the act of the 27th February, 1801, was passed fourteen days after the enactment of the law changing the judiciary system, and establishing new circuit courts of the United States, and that it gave a more extensive jurisdiction than the 11th section of the act of 1789; but it is scarcely correct to speak of those courts as in existence on the 27th February, 1801. The law creating them was passed on the 13th of February, and the nominations were made and acted on between that day and the 3d of March, 1801; but no one of the courts was organized, and probably no one of the judges actually in office on the 27th February. This, however, is not very important, because the third section of the act of 27th February, 1801, concerning this District, contains no specific reference to the act of 13th February, but merely says, "that the said court, and the judges thereof, *shall have all the powers vested in the circuit courts, and the judges of the circuit courts of the United States.*" The object of this section evidently was to define the *general* powers of the court, and not to enter into the details rendered necessary by the peculiar condition of the District, which was done in the 5th section. Its general powers, and the general power of its judges, were to be the same with those of the circuit courts, and the judges of the circuit courts of the United States, not as defined in any particular law, but as they should, *from time to time, be vested by law in those courts and judges.* This, it seems to me, is the plain meaning of the clause. Consequently, although so long as the act of 1801 remained in force, its provisions formed the measure of the general powers of the circuit court of this District; yet, when it was repealed, and the old provision of the act of 1789 substituted in its place, those substituted provisions became thenceforward the measure of its general powers. This is the general rule of interpretation in such cases, because it is not to be presumed, unless the contrary be expressly declared, that the repealed law shall remain in force in respect to any one of several cases standing on the same ground, and thus produced an unnecessary and anomalous distinction. This rule is specially applicable to the present case. The act of the 8th March, 1802, repeats the acts of the 13th February and the 3d of March, 1801, from and

after the first of July then next, and contains no exception whatever of the court established in this District. The third section expressly declares, "that all the acts, and parts of acts, which were in force before *before* the passage of the aforesaid two acts, and which by the same were either amended, explained, altered, or repealed, shall be, and hereby are, after the said day of July next, revived and in as full and complete force and operation as if the said two acts had never been made." Under these circumstances, it seems to me impossible to derive any power from the act of the 13th of February, 1801, and I shall, therefore, omit any reference to the particular provisions of that law.

4. I do this the rather, because, in my judgment, neither the provisions of that law, supposing them to be in force, nor those of any other law that has been or can be passed, under our present Constitution, however broad they may be in their terms, can confer on any court of the United States the power to supervise and control the action of an executive officer of the United States, in any official matter properly appertaining to the executive department in which he is employed.

In my former communication, I did not deem it needful to enter into the exposition of this part of the case. The two decisions of the Supreme Court, to which I referred, seemed sufficient for my purpose, and for obvious reasons connected with the history of the case of Marbury vs. Madison, I purposely refrained from any allusion to that case. The claim of jurisdiction now made by the circuit court, and the course of reasoning by which it is supported, involving, as they do, an assertion of power to direct, not only the Postmaster General, but every other executive officer residing within the District, in the performance of his official duties, when they are supposed to affect the legal rights of an individual, compel me to explain the constitutional grounds on which this part of my opinion is founded.

The proceedings of the convention which formed the Constitution abundantly prove the earnest desire of its authors to separate the three great departments, the legislative, executive, and judicial, from each other, and to render each independent of the other two. This general object was accomplished, with a few specified exceptions, by the actual provisions of the Constitution. It declares that "the executive power shall be vested in a President of the United States." In accordance with this fundamental arrangement it subsequently provides, that the President "shall *take care* that the laws be *faithfully* executed." As a means to the performance of this duty, it gives to the President the exclusive power of appointing, by and with the advice and consent of the Senate, the principal officers in the executive departments; it authorizes him to require from them their opinions in writing, "upon any subject relating to the duties of their respective offices;" it secures the appointment of inferior executive officers to the President alone, or to

the heads of departments, as Congress shall, by law, direct; and, according to a construction coeval with the existence of the Government, and settled on the fullest deliberation, it also secures to the President the power of removing at pleasure, either by his own act, or through the agency of the heads of those departments, every officer employed therein.

The obvious design of all these provisions, was to make the President responsible for the faithful execution of the laws, and for the official acts of all the officers of the executive departments. Not that he should be liable to impeachment, or other criminal procedure, or to a civil action, for every illegal act or culpable omission of each one of those officers; their great number, the distance of many of them from the seat of Government, and the multifarious character of their duties, render it impossible for any one man to give such attention to their conduct, as to become responsible for them in that sense; and the law, whether prescribed by a Constitution, or otherwise, never requires impossibilities; nor that the inferior officer should be exempt from personal responsibility, by impeachment, indictment, or civil action, for any culpable act or omission of duty, even though he may be able to plead in his excuse the express direction of the President. But it is possible for the President, through the heads of the executive departments, to give more or less attention to the proceedings of each department, and to take care that the laws concerning it be faithfully executed; and it is agreeable to reason, and to the rules of law, that where two persons unite in the performance of an illegal act, or culpable omission of duty, each, to a greater or less extent, and according to the circumstances of the case, should be personally responsible, although one of them may have an official superiority to the others. This species of responsibility it was the design of the Constitution to fasten on the President, and hence it vests in him, and him alone, with a few specified exceptions, the whole executive powers of the Government. It is true that, within a few years, the doctrine has been advanced, that when the Constitution says, "*the executive power shall be vested in a President of the United States*," it merely intends to give a name to the department, and not to grant any executive power; and, on this ground, efforts have been made to prove that the President alone does not possess the power of removal. But it is also true, that this doctrine is directly opposed to the natural import of the language used; to the principles on which the power of removal was established by the first Congress; to the expositions then and since given by the ablest expounders of the Constitution; and to the actual course of the Government, acquiesced in by all its branches, during the whole period of its existence.

The system thus ordained by the Constitution, whatever diversity of opinion may have existed, or may yet exist, as to its expediency, cannot be varied or interfered with by the legislature or the judiciary. It belongs to the legislature to create the executive depart-

ments, to define their powers and duties, to provide the requisite officers, to prescribe their various functions, and to make all other legal provisions which may be necessary and proper to regulate the action of those departments. But when a law is once passed for the government of the executive officer, all that appertains to its execution falls under the care of the President. It is his province to instruct and command the officer, to remove him if he acts unfaithfully, and to appoint one in his place who will fulfil his duty agreeably to the law. No other department of the Government can exercise this power of removal. The legislature cannot do it themselves, nor can they devolve it on the judiciary; nor can those two departments combined take it from the President.

It results, from the foregoing principles, that the writ of mandamus cannot be issued by any court of the United States, to any officer, whether principal or inferior of an executive department, for the purpose of commanding the execution of any law concerning the appropriate executive duties of such officer. This conclusion will be strengthened by a little attention to the history and nature of this writ.

From an early period, it has been used by the English court of King's Bench, as a means of enforcing *its general supervisory jurisdiction* over courts, magistrates, and ministerial officers, inferior to that tribunal. By the statutes of 9 Anne, c. 20 and 11, George 1, c. 4, it was so extended as to afford a remedy for persons entitled to offices or places in corporations, and to compel elections, and correct abuses therein of corporate officers; but I find no instance of its being directed to any other officer of the executive departments. In England it issues from the King's Bench alone, because, in that court the King originally sat in person, and, by fiction of law, is yet supposed so to do, and because the authority to control the inferior jurisdiction is one of his regal prerogatives. It is, therefore, denominated by Blackstone, and other writers, a high *prerogative* writ; and if the judge, or officer to whom it shall be directed in its peremptory form, fails to obey it, he is punishable for his contempt by attachment. During the colonial government, this branch of the King's prerogative extended to the colonies, and was executed through those colonial courts which were invested with a jurisdiction analogous to that of the King's Bench, and from them the jurisdiction has been derived to the State courts which succeeded them.

Under the 14th section of the Judiciary act of 1789, the Supreme Court, in aid of its appellate jurisdiction, may issue this writ, in all cases where any act necessary to the exercise of that jurisdiction shall be omitted to be performed by an inferior tribunal or officer; and the circuit courts of the United States may also issue it in like cases. In these instances the original design of the writ is plainly kept up; the tribunals or officers to which it is issued are subordinate to the appellate court, which, in these respects, exercises over them a supervisory jurisdiction.

The writ, then, necessarily implies a supervisory power, in the court which issues it, over the tribunal or officer to which it is directed. In the cases mentioned such a power exists; but under the Constitution of the United States it has not been given to, and cannot exist in, any of our courts, over the executive departments.

The existence of such a power in the judiciary is repugnant to the whole theory of the Constitution; its effectual exertion, if it were practicable, would defeat the President's power of removal; would take away his responsibility for the faithful execution of the laws; and would transfer to the judiciary, in the particular case, the whole executive power; for it is palpable that, if the President, under the belief that the faithful execution of the law will be best secured by *not* doing a particular thing which is demanded by a third party, so directs the executive officer, and the court, on the application of such party, issues a mandamus commanding it to be done, and the writ is obeyed, it is the court, and not the President, that exercises the executive power; and the distribution of powers so carefully fixed by the Constitution is unsettled and overturned. But its effectual exertion is not practicable, because the President's power of removal cannot be restrained; and, by its exercise, he can readily defeat any command which the judiciary may address to the executive officers. To illustrate this, let us suppose that the circuit court of this District issue a peremptory mandamus to the head of any one of the departments, commanding him to execute any particular law concerning his official duties in a given way, and that the officer refuses obedience, and is attached and committed for the contempt. This is the end of the judicial power in a case of mandamus. But suppose, at this stage of the proceedings, the President interferes by removing the officer, and appointing a successor, what becomes of the judicial remedy? The act can only be performed by a person holding the office. The individual in the custody of the court no longer holds that office; it has been legally taken from him; and if he were ever so willing to perform the act, he has no longer the ability to do so. The proceeding must then be abandoned, or commenced *de novo* against the new officer, to be frustrated, if the President thinks proper, at the same stage as often as the court shall reach it. If it be said that this is supposing an extreme case, and that the President, from respect to the judiciary, would, probably, suffer the officer to obey the mandamus, rather than so exercise the constitutional power of removal, the answer is, that the very existence of such a power, whether it be used or not, is fatal to the claim of jurisdiction, and that cases may easily be supposed, in which the President, with the strongest desire to avoid a conflict with the judiciary, may yet have no alternative but to use it. In cases which properly refer themselves to the judiciary, it is rarely or never possible to defeat, in this way, the ultimate execution of the judgment of the court. And the fact that, without the *consent* of the executive department, a peremptory mandamus

to an executive officer must forever remain inoperative, exhibits, in the clearest light, the incapacity of any court to issue such a writ.

I am aware that those parts of the opinion of Chief Justice Marshall, in the case of Marbury vs. Madison, which are quoted at length in the opinion of Judge Cranch, may seem to be repugnant to the conclusion at which I have arrived. In that case (1 Cranch, 137) applications were made in December, 1801, by Messrs. Marbury and three other persons, to the Supreme Court of the United States, for a rule to Mr. Madison, then Secretary of State of the United States, to show cause why mandamus should not issue, commanding him to cause to be delivered to them, respectively, their several commissions as justices of the peace in the District of Columbia. The application was founded on the following facts: Mr. Adams, whilst President of the United States, and on the 2d of March, 1801, had nominated the applicants to the Senate for the offices of justices of the peace in the District of Columbia; their nominations were confirmed the next day, and commissions were made out, signed by President Adams, sealed, and left in the Department of State. Mr. Jefferson came into office as President the next day, and forbade their delivery, and they were accordingly withheld by Mr. Madison. On the return of the rule to show cause, the counsel for the relators was heard *ex parte*, Mr. Madison not appearing. The case was disposed of, and the application *denied*, on the ground that the Supreme Court of the United States had no authority to issue a writ of mandamus, except in the exercise of its *appellate* jurisdiction; and that so much of the 13th section of the Judiciary act of 1789, as purported to empower that court to issue writs of mandamus, "to persons holding office under the authority of the United States," in original cases, was unconstitutional and void.

The order of discussion, as adopted by the chief justice, was as follows:

"1. Has the applicant a right to the commission he demands?

"2. If he has a right, and that right has been violated, do the laws of his country afford him a remedy?

"3. If they do afford him a remedy, is it a mandamus issuing from this court?"

These questions opened all the points in the case, and they are accordingly considered at large; but it is obvious that only the remarks under the third head were necessary to the decision of the cause, and that the elaborate reasoning under the first and second heads, including all the passages quoted in the opinion referred to me, was wholly extra-judicial. Every topic embraced under these heads, is, therefore, open to discussion, not only in the Supreme Court, but in the inferior courts. The fact that the case was argued only on one side, must also be allowed to diminish, still more, the weight of these parts of the opinion; and then, also, it must be borne in mind that general expressions are always to be taken in

connexion with the particular case in which these expressions are used.

Chief Justice Marshall himself has claimed the benefit of this latter rule, in reference even to that part of the opinion of Marbury vs. Madison which explained, under the third head, the very ground on which the cause was decided.

In the case of *Cohens* vs. The *State of Virginia*, (6 Wheaton, 264,) the counsel for the defendant in error quoted and relied on some *dicta* of the court in the case of Marbury *vs.* Madison. In reply to the argument founded thereon, the chief justice remarks: "It is a maxim not to be disregarded, that general expressions, in every opinion, *are to be taken in connexion with the case in which those expressions are used.* If they go beyond the case they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated. In the case of Marbury *vs.* Madison, the single question before the court, so far as that case can be applied to this, was, whether the legislature could give this court original jurisdiction in a case which the Constitution had clearly not given it, and in which no doubt respecting the construction of the article could possibly be raised. The court decided, and we think very properly, that the legislature could not give original jurisdiction in such a case. But in the reasoning of the court in support of this decision, some expressions are used which go far beyond it."

He then explains the particular occasion of the *dicta* relied on, and the cases to which they were intended to apply, and proceeds as follows:

"Having such cases only in its view, the court lays down a principle, which is generally correct, *in terms much broader than the decision, and not only much broader than the reasoning with which that decision is supported,* but in some *instances contradictory to its principle.*" He then states the construction given to the passages quoted, and the argument founded on it, and observes:

"To this construction the court cannot give assent. The general expressions in the case of Marbury *vs.* Madison must be understood with the limitations which are given to them in this opinion, limitations which in no degree affect the decision in that case, or the tenor of its reasoning."

If the general expressions contained in the essential parts of the opinion require to be thus limited, the like caution must be still more necessary in considering the other parts. On perusing them with care, it will be found that, before entering on the discussion of the remedy by *mandamus*, the chief justice had decided that the

appointments in question became complete by the signing and sealing of the commission; that the applicant had, therefore, a vested legal right to the office, and to the commission as the evidence of it, of which the Executive could not deprive him; that the Secretary of State had received the commission from the President for the use of the applicant, and that he had no more right to withhold it than any other person.

This reasoning in support of the remedy by *mandamus* depends entirely on the conclusion previously expressed that the appointment was complete, and the official power and agency of the President and the Secretary of State in the matter at an end; and it was precisely on this point that President Jefferson dissented, in such strong terms, from the opinion of the chief justice. Speaking of this case in a letter to Judge Johnson, (Jefferson's Correspondence, vol. 4, p. 372,) he says: "The commissions were signed and sealed by him, (Mr. Adams,) but not delivered. I found them on the table of the Department of State on my entrance into office, and I forbade their delivery. Marbury, named in one of them, applied to the Supreme Court for a mandamus to the Secretary of State (Mr. Madison) to deliver the commission intended for him. The court determined at once that, being an original process, they had no cognisance of it; and then the question before them was ended. But the chief justice went on to lay down what the law would be, had they jurisdiction of the case, to wit, that they should command the delivery. The object was clearly to instruct any other court, having the jurisdiction, what they should do if Marbury should apply to them. Besides the impropriety of this gratuitous interference, could any thing exceed the perversion of the law? For, if there is any principle of law never yet contradicted, it is, that delivery is one of the essentials to the validity of a deed. Although signed and sealed, yet, as long as it remains in the hands of the party himself, it is in fieri only; it is not a deed, and can be made so only by delivery. In the hands of a third person it may be an escrow. But whatever is in the executive offices is certainly deemed to be in the hands of the President, and in this case was actually in my hands, because, when I countermanded them, there was as yet no Secretary of State." The tone and language of this passage may be regretted, but it shows very plainly, when taken in connexion with the opinion, the real point on which the controversy turned.

In this view of the case, it is manifest that the question now presented, viz., whether a mandamus can be issued to the head of an executive department, commanding him to perform an executive act which had not yet been commenced, did not arise. The difference between this question and the question whether Congress can authorize the judiciary to issue a *mandamus* to an executive officer, to compel the delivery of a paper in his possession containing the evidence of a *past* executive act already fully performed, is too obvious to need remark.

The limitations to which the *obiter* arguments in the case of *Marbury* vs. *Madison* are thus necessarily subject, rescue the present case from their influence, and supercede the necessity of a particular examination of any part of them.

There are, however, one or two remarks on the arguments of the chief justice, which, as they may tend to elucidate the general subject, and to prevent misapprehension, ought not to be omitted.

He labors to prove, that where a legal vested right has been violated by a public officer, or where a specific duty, on the performance of which individual rights depend, is assigned by law to an officer, and he refuses to perform it, the individual who considers himself aggrieved has a right to resort to the laws of his country for a remedy, and that the conduct of the officer is liable to be judicially examined. This, if ever doubtful, is now too well settled to be disputed. Actions of trespass, and other actions for damages against collectors of the customs, officers of the army and navy, and other public functionaries, for official acts or omissions injurious to the vested rights of individuals, are of frequent occurrence; and it is not to be doubted that, through such actions, any officer of the Government, the President included, may be held responsible in damages for the violation of any vested legal right. But these actions are against the officer in his individual character, and do not imply any power in the judicial tribunals in which they may be prosecuted, to supervise and control, in advance, the official action of the officer. Such a power, however, is implied in the jurisdiction by *mandamus;* and its compatibility with the Constitution, when issued to an executive officer for the purpose of compelling him to perform a specific executive duty, is a point not discussed, nor even touched in the opinion—probably because it was supposed that, if the appointment were regarded as *complete*, the point could not arise.

This subject was much considered, in the year 1808, by one of my predecessors in office. In that year, an application was made by Messrs. Gilchrist and others, to the circuit court of the United States for the district of South Carolina, for a rule on the collector of the port of Charleston to show cause why a *mandamus* should not issue to him, commanding him to grant clearances for certain ships detained by the collector under instructions from the Secretary of the Treasury given under the embargo acts. The collector appeared, showed cause, by producing the Secretary's instructions, and submitted, without argument, to the decision of the court. The judges, being of opinion that the instructions were illegal, ordered a *mandamus* to be issued, commanding the collector to grant clearances, as applied for. President Jefferson, on hearing of these proceedings, referred the subject to the then Attorney General, Mr. Rodney, who expressed a decided opinion against the power of the court to issue the writ. After stating several reasons growing out of the limited jurisdiction of the courts of the United States, and

the peculiar provisions of the law under which the instructions of the Secretary of the Treasury had been issued, he concludes as follows:

"It might, perhaps, with propriety be added, that there does not appear in the Constitution of the *United States* anything which favors an indefinite extension of the jurisdiction of courts over the ministerial officer within the executive department. On the contrary, the careful discrimination which is marked between the several departments should dictate great circumspection to each, in the exercise of powers having any relation to the other.

"The courts are indubitably the source of legal redress for wrongs committed by ministerial officers, none of whom are above the law. The redress is to be administered by due and legal process, in the ordinary way; for there appears to be a material and obvious distinction between a course of proceeding which redresses a wrong committed by an executive officer, and an interposition, by a mandatory writ, taking the executive authority out of the hands of the President, and prescribing the course which he and the agents of any department must pursue. In one case, the executive is left free to act in his proper sphere, but is held to strict responsibility; in the other, all responsibility is taken away, and he acts agreeably to judicial mandate. Writs of this kind, if made applicable to officers indiscriminately, and acts purely ministerial and executive in their nature, would necessarily have the effect of transferring the powers vested in one department to another department. If, in a case like the present, where the law vests a duty and discretion in an executive officer, a court cannot only administer redress against the misuse of the authority, but previously direct the use to be made of it, it would seem that, under the name of a judicial power, an executive function is necessarily assumed, and that part of the constitution perhaps defeated which makes it the duty of the President to take care that the laws be faithfully executed. I do not see any clear limitation to this doctrine which would prevent the courts from compelling, by mandamus, all the executive officers—all subordinate to the President, at least, whether charged with legal duties in the Treasury or other departments—to execute the same according to the opinion of the judiciary, and contrary to that of the executive. And it is evident that the confusion arising will be greatly increased, by the exercise of such a power by a number of separate courts of legal jurisdiction, whose proceedings would have complete and final effect, without an opportunity of control by the Supreme Court. So many branches of the judiciary, acting within their respective districts, their courses might be different, and different rules of action might be prescribed for the citizens of different States, instead of that unity of administration which the Constitution meant to secure, by placing the executive power for them all in the same head.

What, too, becomes of the responsibility of the Executive to the court of impeachment and to the nation? Is he to remain respon-

sible for acts done by command of another department? Or is the nation to lose the security of that responsibility altogether? From these and other considerations, were this branch of the subject to be pursued, it might be inferred that the Constitution of the *United States*, by the distribution of the powers of our Government to different departments, ascribing the executive duties to one, and the judiciary to another, controls any principle of the *English* law which would authorize either to enter into the department of the other to annul the powers of that other, and to assume the direction of its operations to itself."

This opinion may be found at length in Hall's American Law Journal, (vol. 1, p. 433,) and at page 440 of the same volume will be found a reply from Judge Johnson, who presided in the circuit court when the mandamus was issued. This paper embraces a full review of most of the objections of the Attorney General, but it by no means answers the argument just quoted. The submission of the collector and the district attorney is relied on as at least excusing the act of the court; and in the case of McIntyre vs. Wood, (7 Cranch, 504,) it is expressly admitted by Judge Johnson himself that the court had no jurisdiction in the matter except that derived from the consent of the public officers. This is his language:

"A case occurred some years since in the circuit court of South Carolina, the notoriety of which may apologise for making an observation upon it here. It was a mandamus to a collector to grant a clearance, and unquestionably could not have been issued but upon a supposition inconsistent with the decision in this case. But that mandamus was issued upon the voluntary submission of the collector and the district attorney, and in order to extricate themselves from an embarrassment resulting from conflicting duties." "*Volenti non fit injuria.*"

As the Charleston case is the only one, prior to the present, in which a writ of mandamus has ever been actually issued by any of the courts of the United States to an executive officer, its history and result are interesting, and I am happy to find in them so decisive a corroboration of my own opinions.

5. But the ground is taken, in the opinion of the circuit court, that the relation of the Postmaster General to the President is very different from that of the other heads of departments. "They," say the court, "in the very terms by which their offices were created, and their duties defined, are to perform such duties and execute such orders as they shall be required to perform and execute by the President of the United States."

"It is true that he is appointed, and therefore may be removed, by the President. But the President, if he has the *power* to control him, can only do it through his fear of removal. If he should so control him, no act done by him under that control could be thereby justified. The Postmaster General, in the exercise of the duties of his office, appears to be legally as independent of the President as the President is of him.

It was with great surprise that I perused this part of the opinion. The constitution assumes that certain executive departments will be created, but does not attempt to enumerate them, nor was any enumeration necessary, because the very nature of the functions assigned to any particular department would readily determine its true character. The whole business of the Post Office Department, and all the official duties of the Postmaster General, as its head, are exclusively *executive;* and if the views of the Constitution above taken be correct, then, whatever may be the language of the acts of Congress respecting the department, there exists a most intimate connexion between the Postmaster General and the President; and the latter has the same control over the exercise of his official functions, when not prescribed by law, and is subject to the same obligation of taking care that all his duties are faithfully performed, which exist in respect to the heads of other departments.

The passage above quoted is not less repugnant to the practical course of the Government.

One of the first official acts of President Washington, after entering on the Chief Magistracy, was to call on the Postmaster General for an account of the state of his office.

"A perfect knowledge," says his biographer, "of the antecedent state of things being essential to a due administration of the executive department, its attainment engaged the immediate attention of the President; and he required the temporary heads of departments to prepare and lay before him such statements and documents as would give this information." (Marshall's Life of Washington, vol. ii, p. 150.) The form of this requisition will be found in the late collection of his writings, (vol. x, p. 11,) and it will be seen by the note of the editor, Mr. Sparks, that it was addressed, among others, to Ebenezer Hazard, the Postmaster General appointed by the old Congress.

The first law concerning the Post Office Department, passed after the adoption of the Constitution, was the act "for the temporary establishment of the Post Office," approved September 22, 1789. It consisted only of two sections, the last merely declaring the law should remain in force until the end of the next session of Congress, and no longer. The first section was in the following words:

"*Be it enacted, &c.*, That there shall be appointed a Postmaster General; his powers and salary, and the compensation to the assistant or clerk and deputies which he may appoint, and the regulations of the post office, shall be the same as they last were, under the resolution and ordinances of the late Congress; the Postmaster General to be subject to the direction of the President of the United States, in performing the duties of his office, *performing*, and in forming *contracts for the transportation of the mail.*" This act was continued in force by the acts of August 4th, 1790, March 3d, 1791, and February 20th, 1792, to the 1st June, 1792, when it gave place to the act of 20th February, 1792, "to establish the

post office and post roads within the United States," which fully organized the department, and introduced numerous legal provisions for the government of its concerns.

Since 1792, the duties of the Postmaster General have been so far defined by law as to leave little room for executive direction; and it was not until 1829 that he was regarded as a member of the President's cabinet; but that his office has always been treated by Congress, as well as the President, as an executive department, is shown by the acts of 1789, which left all its concerns to the direction of the President; by the act of 1792, and all the subsequent laws which speak of it as a "department;" by the power of appointing postmasters, vested by law from 1789 to 1836 in the Postmaster General alone, and still retained by him in all cases when the commissions of the postmaster are under $1,000—an arrangement palpably unconstitutional, unless the Postmaster General be the head of a department; by the practice of all those who have held the office of President, to require reports from, and to give directions to, the Postmaster General; by the placing the department on the same footing, in respect to salary and organization, with the other great executive departments; and, finally, by the introduction of its head into the cabinet council of the President.

The relation, then, of the Postmaster General to the President, is the same as that of the other heads of the departments. This relation does not authorize the President to give any direction to the Postmaster General contrary to the laws concerning the department; but it authorizes and requires him to direct the faithful execution of those laws, and to take care that such directions be followed; and as the only coercive power with which the President is armed by the Constitution is the power of removal, it will be his duty to exercise that power, if he cannot otherwise secure, on the part of the Postmaster General, a faithful execution of the laws. Nor will acts done by the Postmaster General, under the President's direction, be invalid, even though the judgment of the former be opposed to the act, and he be induced, through fear of removal, to execute the President's direction. The defectiveness of the motive will not determine the legal character of the act. If it be within the power of the department, and be conformable to law, it will still be valid.

I think, therefore, that this officer is no more subject in his official action to the supervision and control of the judiciary, than the head of any other executive department, and that the principles above stated, if sound in respect to any executive officer, must be admitted, when the subject is fully examined, to be equally applicable to him. On the other hand, the claim of judicial power set up in the present case, in respect to the Postmaster General, involves the like claim over the official action of every other executive department, and therefore brings into discussion one of the most grave and important questions which has yet arisen in the practical administration of the Government.

I am, sir, ——— ———.

And now, to wit, this thirteenth day of July, in the year aforesaid, came into the circuit court here the parties aforesaid, by their attorneys aforesaid; and the court, after having heard counsel on both sides, and fully understanding the whole matter, and after mature deliberation thereon, made the following order, to wit:

Order for peremptory mandamus.

Whereas, heretofore, at a term of the circuit court of the District of Columbia for the county of Washington, to wit, on the 7th day of June, 1837, the said circuit court, upon certain grounds then appearing to them, did order and direct that a writ of mandamus should issue, directed to Amos Kendall, Postmaster General of the United States, commanding and enjoining him that forthwith and without delay, immediately upon the receipt of said writ, he credit certain mail contractors therein named with the full amount of money as therein mentioned, awarded, and decided to be due to the said mail contractors by the Solicitor of the Treasury, under the power and authority conferred on him by the act of Congress therein mentioned, according to the true intent and meaning of said award and decision; or that he, the said Postmaster General as aforesaid, show cause to the contrary on or before ten o'clock, A. M., on Saturday the 10th of June instant, 1837.

And whereas the marshal of the said District hath made return to the said court, that the said writ of mandamus was duly served on the said Amos Kendall, Postmaster General as aforesaid, on the 7th day of June last; and whereas the said Amos Kendall, Postmaster General as aforesaid, on the 24th day of June, 1837, to which day time was given to him to make return to said writ, did certify and return reasons why the said circuit court should not award this writ of mandamus in this behalf; and whereas, afterwards, to wit, at the same session of said circuit court, upon consideration of the said return, and of the reasons therein contained against the awarding and issuing of the said writ of mandamus, and upon considerations of the arguments of counsel, as well on behalf of the said Amos as of the said relators, it was considered and adjudged by the court that the said return was insufficient, and should be quashed. Therefore, on motion, on behalf of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, the relators aforesaid, it is, this thirteenth day of July, 1837, by the said circuit court, on due consideration of the premises, ordered and directed that a peremptory writ of mandamus do issue, to be directed to the said Amos Kendall, Postmaster General of the United States, commanding him that he do, forthwith, and without delay, immediately upon the receipt of said writ, credit said mail contractors as he was before commanded; and that he do certify perfect obedience to, and full execution of, said writ to this court,

on second Monday of August next, at ten o'clock in the morning of that day.

Test: W. BRENT, *Clerk.*

Appeal from the judgment of the court to Supreme Court of U. S.

And whereas, afterwards, to wit, on the fifteenth day of July, in the year of our Lord one thousand eight hundred and thirty-seven, the said Amos Kendall, Postmaster General of the United States, by his attorney aforesaid, produced and filed in court here the United States writ for the correcting of errors, of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and, in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereto annexed, is hereby transmitted to the said Supreme Court accordingly.

Clerk's certificate.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said circuit court for the county aforesaid, at the city of Washington, this sixth day of October, 1837.

W. BRENT, *Clerk.* [SEAL.]

Papers (from No. 1 to No. 25) referred to in defendant's 1st bill of exceptions.

No. 1.

POST OFFICE DEPARTMENT, *May 14th*, 1835.

GENTLEMEN: The P. M. G. directs me to inform you that he has ordered the payment of the allowances to you, of which you have a note annexed, to be suspended.

Regretting the necessity of resorting to this step, he directs me to say that, in the present circumstances of the department, he finds it a duty, the performance of which is indispensable to enable him to devote the means of the department to the discharge of the regular pay due to contractors, the demands for which should not be postponed to those for allowances.

The conclusion to which the Postmaster General has come has no reference to the nature or merits of the claims, the payment of which is suspended. No question respecting these has been discussed or considered.

The acceptances obtained by you will be paid when they become due, provided the amount be due to you, under your regular contract allowances. If this shall not be the case, then the department agrees to renew them with condition for the performance of

your contracts, provided it shall appear that there will be due to you for regular pay, exclusive of the suspensions now directed, so much as will meet the drafts at the time they become payable.

Your attention to this is requested.

Respectfully, &c.,

(Signed) P. S. LOUGHBOROUGH, *Treas.*

Messrs. Stockton & Stokes.

Routes 1,201 and 1,389.—To Stockton & Neil, 50 per cent. on pay from Baltimore to Wheeling, &c. -	$19,254 00
Together with the entire allowance depending on the same principle, said to be confirmed in February last	43,321 50
Nos. 1,371 and 1,372.—To R. C. Stockton, for additional daily line in winter of 1833–'4 from Baltimore to Philadelphia, and from Baltimore to Washington	16,200 00
Same for 1834–'5 - - - - -	16,200 00
To same for sundries extending from September 30, 1831, to March 31, 1833, inclusive - - -	6,423 46
	101,398 96

No. 2.

Post Office Department, *May 14th*, 1835.

L. W. Stockton, esq.:

Sir: The Postmaster General directs me to inform you that he has ordered the payment of the allowances to you, of which you have a note, to be suspended.

Regretting the necessity of resorting to this step, he directs me to say that, in the present circumstances of the department, he finds it a duty, the performance of which is indispensable, to enable him to devote the means of the department to the discharge of the regular pay due to contractors, the demands for which should not be postponed to those for allowances.

The conclusion to which the Postmaster General has come has no reference to the nature or merits of the claims, the payment of which is suspended.

No question respecting these has been discussed or considered.

The acceptances obtained by you will be paid when they become due, provided the amount [be] due to you under your regular contract allowances. If this shall not be the case, then the department agrees to renew them with condition for the performance of your contracts, provided it shall appear that there will be due to you for regular pay, exclusive of the suspensions now directed, so much as will meet the drafts at the time they become payable.

Your attention to this is requested.

Your obedient servant,

P. S. LOUGHBOROUGH, *Treasurer.*

Routes 1,201 and 1,389.—To Stockton & Neill, 50 per cent. on pay from Baltimore to Wheeling, &c. &c. -	$19,254 00
Together with the entire allowance depending on the same principle said to be confirmed in February last	43,321 50
	$62,575 50

No. 3.

The original of Amos Kendall's editorial in Globe of 29th May, 1835.

The irresponsible letter writers from Washington are busy in misrepresenting the proceedings of the Post Office Department under its new administration. It is stated that Messrs. Stockton & Stokes, Mr. Reeside, and others, have been required to refund large sums of money which have been paid to them, &c. This is an error. We understand that the new Postmaster General, on entering into the department, first took a view of its financial condition, and finding a large amount of claims against it which could not be discharged, and among them certain claims of the contractors referred to, determined to postpone their payments in part, so as to enable him to pay, at the end of the present and every future quarter, all demands which should arise within the quarter. Upon this ground and no other, has the payment of the claims of the contractors named been postponed. (The Postmaster General has made no decision on the merits of those claims, that being a question he has not considered.) Messrs. Stockton & Stokes and Mr. Reeside are among the most efficient mail contractors in the United States, and misrepresentations which should injure their character and credit would produce a real injury to the public.

No. 4.

Stockton & Stokes' letter to the Postmaster General, upon which is an endorsement of the President.

Hon. Amos Kendall, *Postmaster General.*

Dr. Sir: We are just drawn upon by our partner in Florida, Mr. Jno. N. C. Stockton, for $7,000, and Ward Taylor, of Alabama, for $5,000—which they were, under pressing difficulties, compelled to do, in order to sustain their mail lines; and our payments next week now amount [to] $14,326 27, and the week after to $13,098 60. We know not how to provide for the above amount, having exhausted all our means in raising funds in any way. We are therefore compelled to throw ourselves upon your kindness, and to ask, as a special favor, that you will extend to us the relief necessary to keep us from sinking.

It has only been by the greatest exertions, and some heavy sacrifices, that we have been able to continue our engagements thus

far; it was really more than we had expected to be able to do. We did calculate our case before Congress would long ago have been adjusted—but as it is now in a favorable way to be soon settled, we trust you will feel justified in helping us. Our losses the last year in Florida, Mr. Jno. N. C. Stockton writes us, exceed $20,000; and since the Indian war, far greater in proportion. Major Eaton also writes us, that throughout the past winter, up to the time of his leaving Florida, (24th April last,) the travel had been completely driven from the route, and that we must have suffered heavily. Major Taylor likewise writes us most discouragingly.

Now, dear sir, we do hope and trust, and entreat, that you will, under all the circumstances, aid us, and enable us to go on and continue to perform all our contracts faithfully.

Most respectfully, your ob't serv'ts,

(Signed) STOCKTON & STOKES.

Baltimore, 2*d June*, 1836.

Copy to Mr. Kendall.

The tardiness of Congress is very oppressive to those valuable contractors. Their claims, as far as I have investigated, appear founded in equity; but there is no law which will authorize the P. M. General to allow it, therefore must await the action of Congress. A. J.

The Senate's action is the easiest.

No. 5.

Hon. A. Kendall, P. M. General, to Messrs. Stockton & Stokes.

POST OFFICE DEPARTMENT,
4*th June*, 1836.

Messrs. STOCKTON & STOKES, *Contractors, &c.*

GENTLEMEN: Your letter of the 2d inst. came to hand yesterday. No further payment can be made on account of J. N. C. Stockton or Ward Taylor, advances having already been made, by special dispensation of the rules of the department, as far as would be just or proper. Moreover, J. N. C. Stockton, as I am informed, has received an advance of 5,000 dollars, under an arrangement with the postmaster at Mobile, for the temporary conveyance of the New Orleans mail, which, for want of legal authority, I cannot sanction. Mr. Plitt, the agent of the department, now in that quarter, has been instructed to confer with him, and make such an arrangement, within the legal authority of the department, as emergencies may require.

Ward Taylor has been advised that he must receive his pay upon his route, the department having abundant funds at Montgomery and Mobile, which, if not paid to him, must be transferred. As we cannot continue, to some, favors which we deny to others, I must insist on his ceasing to ask for payment here.

Further, in the case of J. N. C. Stockton, the contracts have not been executed, and nothing but your peculiar circumstances has induced me to make any payments upon them whatsoever. I cannot justify myself to the country, if I suffer this omission long to continue.

I regret that the proposition for your relief has not been pressed to a final decision in Congress. There will be no difficulty in paying, within sixty days, the whole amount suspended in our account, if that body shall so direct; and if they do nothing, I shall feel it my duty, after their decision has been given, to make a final adjustment of your old account, in which a considerable sum will probably be brought to your credit. But you are aware that acceptances in your favor have been protested for a large sum; and although the acceptance of the department creates no legal obligation, it does create an obligation in honor and morality to do all within our power to secure payment to the holders. Unless, therefore, there be an arrangement of those claims, I shall feel bound to pay, to the holders of the paper having on it the acceptance of the department, the money which may be found due to you, until they be discharged.

Your honorable bearing towards the department, under trying circumstances, has inspired me with a desire to relieve you, to the extent of my legal authority and to the limits of justice; but those are bounds which no public officer may pass, and stand acquitted to his conscience and his country.

Very respectfully, your ob't serv't,

AMOS KENDALL.

No. 6.

L. W. Stockton to Amos Kendall, Postmaster General.

GADSBY'S, *Washington, Nov'r 10th*, 1836.

Hon. AMOS KENDALL, *Postmaster General.*

SIR: Mr. Stokes informed me that, in conversation with you on Saturday last, you told him you would reply to a communication from the solicitor, on Monday last, so that he might be enabled to decide on our claims before him. I called on Mr. Maxcy yesterday and to-day, and he says he has not received your reply.

Supposing it may have escaped your memory, from pressure of business, I take the liberty of addressing this note, and to say it would greatly oblige us if you would hasten it, as our situation this week as to payments is very precarious.

Respectfully,

L. W. STOCKTON.

No. 7.

POST OFFICE DEPARTMENT, *Nov'r 12th*, 1836.

C. K. GARDNER, esq.,
Auditor for P. O. Department.

SIR: I have this day received the award of Virgil Maxcy, esq., Solicitor of the Treasury, made in pursuance of the act of Congress for the relief of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore; and from the extract which follows, it appears that those parties are entitled to credits amounting to the sum of $83,278.

The claims as made by Mr. Stockton *and* are as follows, to wit:

1st. For increased speed on said three routes, from the 1st January, 1834, to the 31st December, 1835, according to the rate allowed at the Post Office Department, and paid for from 1st January, 1832, to 31st December, 1833; that is, $1,687 $\frac{50}{100}$ per quarter, amounting to -	$13,500 00
2dly. For extra horses and postillions on the route from Baltimore to Wheeling, from 1st January, 1834, to the 31st December, 1835, according to the rate allowed and paid for during the two previous years; that is, $2,453 per quarter, amounting to - - - -	19,624 00
3dly. For increased weight of mails, 50 per centum of $38,508, the amount of all the payments and allowances together, for services on the route from Baltimore to Wheeling, from 1st January, 1832, till 31st December, 1835, being four years, at the rate of $19,254 per annum, or 16 quarters, at $4,813 $\frac{50}{100}$ per quarter, amounting to - - - - -	77,016 00
4th. For interest upon such sums due from the Post Office Department, the payment of which has been suspended - - - -	

I have made a full examination of all the evidence touching the above-mentioned claims, and considered as well that which has been communicated by the Post Office Department and the Secretary of the Senate, as that received from the claimants and collected by depositions and obtained from published documents, and have decided that there are equitably due to the said Richard C. Stockton, on account of said claims, the following sums of money, viz:

For part of the first-mentioned claim for extra services, that is, for five quarters, commencing with the 1st of January, 1834, and ending on the 31st March, 1835, at the rate of $1,687 $\frac{50}{100}$ per quarter, the sum of - - - - -	$8,437 50
For part of the second claim above mentioned, that is, for five quarters, ending 31st March, 1835, at the rate of $2,453 per quarter, the sum of -	12,265 00
For part of third claim above mentioned, on account of increased weight of mails, that is, 50 per centum on all payments and allowances for thirteen quarters, commencing with the 1st January, 1832, and ending on the 31st March, 1835, at the rate of $4,813 $\frac{50}{100}$ per quarter, the sum of - -	62,575 50
Making together, up to the 1st of April, 1835, when the pay of said Stockton was suspended by the present Postmaster General, the total sum of -	$83,278 00

In making payment of any balance which may arise from these credits, you will please first to discharge all the acceptances of the department, in favor of R. C. Stockton or Stockton & Stokes, held by banks, particularly the Bank of the Metropolis and Franklin Bank of Baltimore, and pay the balance, if any, in such way as may be most acceptable to the claimants.

A further award has been made by the solicitor, extending these allowances to 31st December, 1835, the execution of which is held under advisement.

AMOS KENDALL.

No. 8.

Postmaster General's letter of 12th December, 1836, directing the Auditor to credit $38,823 46.

POST OFFICE DEPARTMENT, *December* 12, 1836.

C. K. GARDNER, esq., *Auditor, &c. &c.*

SIR: I have received the decision of the Solicitor of the Treasury, in execution of the act passed at the last session of Congress "for the relief of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore," awarding to Richard C. Stockton the following sums of money, heretofore suspended from his credit on the books of this department, viz:

For an additional daily mail from Washington city, via Baltimore, to Philadelphia, in the winter of 1833–'4 - - - - - -	$16,200 00
For like services in the winter of 1834–'5 - -	16,200 00
For running extra coaches between Baltimore and Washington, between 1st January, 1832, and 31st March, 1833, and sundry other claims - -	6,423 46
	$38,823 46

In obedience to the act of Congress aforesaid, I hereby request that you will enter the foregoing sum of thirty-eight thousand eight hundred twenty-three dollars and forty-six cents, to the credit of the said R. C. Stockton, on the books of your office.

Very respectfully, your obedient, &c.,

AMOS KENDALL.

December 12, 1836.

DEAR SIR: I have the Postmaster General's instructions to pay the residue of the suspensions, about $32,000 balance. It will go in a warrant to-morrow on Baltimore or northern city, if you do not otherwise request.

Yours, very respectfully,

C. K. GARDNER.

WM. B. STOKES, esq.

No. 9.

Postmaster General to President Jackson, 27th December, Jackson, 1836, *and President Jackson's answer.*

POST OFFICE DEPARTMENT, *December* 27, 1836.

To the PRESIDENT OF THE UNITED STATES:

SIR: I have read the letter of Lucius W. Stockton, esq., on behalf of himself and others, informing you of the award of the Solicitor of the Treasury in their favor, and making the following allegation and complaint, viz:

"The Postmaster General, however, withholds from our credit and pay a large part of this award, the non-payment of which is exceedingly oppressive to us, and we now conceive ourselves bound, in duty to ourselves and our creditors, to state the fact to the President, well knowing his determination to see in all cases that the laws are carried into effect."

The suspensions made by me in the account of those gentlemen, which produced their application to Congress for relief, amounted to the sum of $122,101 46.

The Solicitor of the Treasury has awarded them, under the act for their relief, the sum of $162,727 05.

I have directed them to be paid, under that award and in obedience to the law, the sum of $122,101 46, being the entire amount suspended and referred to Congress.

The remainder of the award, $40,625 59, is made up of claims which may be divided into three classes, viz:

1. An extension of certain allowances from the 1st April to the 31st December, 1835, for alleged extra services - - - - - -	$26,862 00
2. Interest - - - - - -	6,894 93
3. The allowances of certain claims for extra services, most if not all of which had been presented to my predecessor, and rejected by him	6,868 66
In all the sum of - - - - -	$40,625 59

In my opinion the act of July 2d, 1836, authorized the solicitor to examine and decide upon the claims which had been suspended by me, *and no others*. Such was my impression when the act passed, and such is believed to have been the intention of those who passed it.

In obedience to the mandate of the law, I have paid those gentlemen $122,101 46, although I have yet to be convinced that they had the least claim in law or equity to one-sixth part of that sum. When the law requires it of me, I shall with equal promptitude pay the remaining $40,625 59, although satisfied that not one cent of it is justly due.

I beg leave respectfully to suggest that, inasmuch as Congress is now in session, the most appropriate resort for the parties complaining is to that body for an explanatory act, which, if it confirm the opinion of the solicitor, I shall implicitly obey.

With the highest respect, your obedient servant,

AMOS KENDALL.

P. S. Since the award was received, and in part executed, a letter has been received from the solicitor, reversing his decision on sundry items amounting to $1,163 16, and reducing the amount awarded by that sum.

Mr. Stockton's letter is herewith returned.

WASHINGTON CITY, *December*, 1836.

SIR: On the receipt of your letter of the 26th instant, I lost no time in referring it to the Postmaster General for his report. Having received that report, I hasten to forward it to you forthwith.

It appearing that there is a difference of opinion between the solicitor and the Postmaster General, upon the extent of the refe-

rence under the law to the solicitor, the Postmaster General having yielded to what he believes to be *all* that was submitted by law to the solicitor's decision, and paid the same. But Congress being now in session, and the best expounder of the intent and meaning of their own law, I think it right and proper, under existing circumstances, to refer it to that body for their decision. I deem this course proper, as the difference in opinion about the extent of the submission under the law arises between the head of the Post Office Department and the solicitor of the Treasury, and as it appears the solicitor has revised, in part, his decision and award.

Yours respectfully,

ANDREW JACKSON.

Mr. LUCIUS W. STOCKTON, acting for himself and others.

No. 10.

24TH CONGRESS, 2D SESSION.

Message from the President of the United States, transmitting a report of the Postmaster General on the claim of Stockton & Stokes.

To the Senate of the United States:

I herewith transmit to the Senate a report of the Postmaster General on the subject of the claims of Messrs. Stockton & Stokes, with a review of that report by the Solicitor of the Treasury, to whom, under a law of last session of Congress, all the suspended debts of those contractors had been submitted. Also, a supplemental rejoinder by the Postmaster General, since the report of the Solicitor of the Treasury was made, with the papers accompanying the same, all of which are respectfully submitted for the consideration of the Senate.

(Signed) ANDREW JACKSON.

February 15*th*, 1837.

No. 11.

Amos Kendall, Postmaster General, to Messrs. Stockton & Stokes, declining action under the Senate's resolution.

POST OFFICE DEPARTMENT, *Feb'ry 27th*, 1837.

Messrs. STOCKTON & STOKES, *Mail contractors:*

GENTLEMEN: I duly received your letter dated 25th inst., in which you say: "Having laid our case before Congress in pursuance of your recommendation, and considering the proceedings thereon by the Senate as finally disposing of the subject, we now earnestly request that you will issue a warrant for the payment of the balance due us on the award of the Solicitor of the Treasury."

It is respectfully suggested, that you have greatly misconceived the character of the proceedings of the Senate in this respect.

They have passed a separate resolution declaring that "the Postmaster General is fully warranted in paying, and ought to pay William B. Stokes and others, respectively, the full amount of the award of the Solicitor of the Treasury." This resolution cannot be intended as a judicial opinion and decision for my government; because the Senate has no constitutional power to construe the laws with a view to control the action of the executive department. Nor can it be intended as an additional or amendatory law, because the Senate cannot make laws without the concurrence of the other branch of the legislative authority. It can be understood only as a declaratory resolution, submitted to the Senate to elicit the opinion of that body, preparatory to legislation, to be followed up by an explanatory act or joint resolution.

So far, therefore, from having "finally disposed of the subject," the Senate have taken but the first initiatory step—a step which cannot have the least constitutional effect *effect* out of their own walls, unless it shall be followed up by an act of legislation. And as neither the law, nor my opinion of it, has undergone any change, I am compelled, for the same reasons which have governed me heretofore, to decline "issuing a warrant for the payment of the balance" alleged to be due you, "on the award of the Solicitor of the Treasury."

Very respectfully, your obdt. servt.,

AMOS KENDALL.

No. 12.

Postmaster General declining payment of balance, in letter to R. C. Stockton.

POST OFFICE DEPARTMENT, *May* 18*th*, 1837.

RICHARD C. STOCKTON, esq:

SIR: Your letter of the 16th inst., by Matthew St. Clair Clark, esq., has been received.

On behalf of yourself and others, you request and demand payment of the unpaid balance awarded you by the Solicitor of the Treasury under his construction of the act of 2d July, 1836, for your relief.

For the reasons given in my letter of 27th February last, and others, I decline a compliance with your "demand."

Very respectfully, your obdt. servt.,

AMOS KENDALL.

No. 13.

Messrs. Stockton & Stokes, per M. St. Clair Clark, to Postmaster General, and Postmaster General's answer.

Hon. AMOS KENDALL, esq:

SIR: In compliance with your request, I called at the hour fixed, viz: five o'clock, P. M., and did not find you at home. I now call

again, and request an answer from you on or before 10 o'clock to-morrow morning, explicitly declaring whether you will or will not pay the balance of the money awarded to Stockton & Stokes and others, according to the sums and dates of the award by the Solicitor of the Treasury.

No more particulars need be stated. I have done this at the request of my clients, to render the compliance on your part, with the decision of twelve judges of the United States courts, as inoffensive as possible. The proceedings by the circuit court, in case of refusal by you, are on your own responsibility, and those who are bound to see the laws faithfully executed.

Very respectfully, your obdt. servt.,

M. ST. CLAIR CLARK,
For STOCKTON & STOKES, &c.

23*d March*, 1838, 6 *o'clock*, *P. M.*, *Washington.*

POST OFFICE DEPARTMENT, *Mar.* 23*d*, 1839, 9 *P. M.*

M. ST. CLAIR CLARK, esq., present:

SIR: Your letter dated 6 o'clock, P. M., on this day, is just at hand. Having been detained at the department this evening by public business until after dark, I was not so fortunate as to see you when you called at my house.

You say, "I now call again and request an answer from you on or before 10 o'clock to-morrow morning, explicitly declaring whether you will or will not pay the balance of the money awarded to Stockton & Stokes and others," &c.

And you are pleased to say in conclusion: "The proceedings of the circuit court in case of refusal by you are on your responsibility, and those who are bound to see the laws faithfully executed."

What I purpose to do would have been readily stated to you, had you contented yourself with making the inquiry, and will be as readily stated to any of those whom you call your clients, upon a proper application.

With due respect, your obdt. servt.,

No. 14.

Amos Kendall to C. K. Gardner, Auditor of the Post Office Department, refusing *refusing* solicitor's award.

POST OFFICE DEPARTMENT, *March* 24*th*, 1838.

C. K. GARDNER, esq., Auditor, &c. &c.:

SIR: By the advice of the President of the United States, I have herewith communicated to you two awards of the Solicitor of the Treasury, dated November 12th, 1836, and the other November 23d of the same year, purporting to have been made "in obedience to and in pursuance of the authority of an act of

Congress of the 2d July, 1836, entitled an act for the relief of Wm. B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, that you may make such adjustment of their account as your official duty may seem to require.

In making this communication, I consider myself as performing *a mere ministerial act*, involving no responsibility whatsoever as to the action to be had thereupon.

Very respectfully, your obdt. servt.,

(Signed) AMOS KENDALL.

No. 15.

William B. Stokes, for himself and others, to Postmaster General, for payment, &c.

To Hon. AMOS KENDALL, esq., Postmaster General:

SIR: After my interview with you yesterday, in accordance with your note to Mr. Clark, I called on Col. Gardner, the Auditor, to whom you referred me.

I concluded, of course, that your reference to him was to enable me to get the balance of our money, as in that way you had ordered the two first sums to be paid.

On referring myself to him yesterday, I found that instead of considering himself bound to do a mere ministerial act, which could be done in a few minutes, he felt himself required to investigate the claim, and to consult the papers and records connected therewith.

Against this proceeding I am forced to protest, and to advertise the Postmaster General that we consider him as the proper and only person bound to carry out the mandate of the court.

I have called again to-day, with one of our counsel, Mr. Clark, to press for the immediate closing of this ruinous business, and to intimate to the auditor what we would consider as the amount to be paid us.

No further progress has been made, and now, at the end of two weeks from the decision of the Supreme Court, we are permitted still to suffer for want of our money.

I shall feel bound, in duty to myself and others, to direct my counsel to proceed to the execution of the deferred process at 12 o'clock to-morrow.

I cannot but express my deep regret at this necessity, but it is impossible for us to enter into any controversy with the auditor, or to recognise any other person in settlement than the one from whom the law required its execution, and to whom the true expounders of that law have spoken in broad and plain terms.

With due respect, your obdt. servt.,

WM. B. STOKES,

For himself and others.

27th March, 1838, *Washington.*

No. 16.

Amos Kendall to Wm. B. Stokes, declining any interference with Auditor of Department.

POST OFFICE DEPARTMENT, *Mar. 28th*, 1838.

WILLIAM B. STOKES, present:

SIR: Your letter of yesterday was not seen by me until this morning.

Adverting to the information received from me on the 26th, that I had communicated the awards of the Solicitor of the Treasury to the Auditor of the Treasury, of the Post Office Department, you proceed to say:

"On referring myself to him, yesterday, I found that, instead of considering himself bound to do a mere ministerial act, which could be done in a few minutes, he felt himself required to investigate the claim, and to consult the papers and records connected therewith. Against this proceeding I am forced to protest, and to advertise the Postmaster General, that we consider him as the proper and only person bound to carry out the mandate of the court."

Having adverted to another call on the auditor on yesterday, you proceed to say:

"I shall feel bound, in duty to myself and others, to direct my counsel to proceed to the execution of the deferred process, at 12 o'clock to-morrow."

"I cannot but express my deep regret at this necessity, but it is impossible for us to enter into any controversy with the auditor, or to recognise any other person in settlement than the one from whom the law required its execution, and to whom the true expounders of that law have spoken in broad and plain terms."

As stated to you in conversation, I have transmitted the awards of the solicitor to the auditor, as a mere ministerial act, all power of judgment being denied me by "the expounders of the law" to whom you refer. You know very well that I have no power to control the auditor's official action, to compel him to enter a credit, or report a balance due; and you know, also, that I cannot pay a sum of money otherwise than in pursuance of his report. On those points he is as independent of me as the head of one of the other departments. If he refuse to do "a ministerial act," or any other act appertaining to his official duties, I have no means to compel its performance; and any protest or appeal, with a view of controlling him, should be addressed to those to whom he is responsible.

Having performed, in this case, the only ministerial act, legally, physically, or morally, in my power, and having, as you well know, no authority to control the action of the auditor, I can consider your letter in no other light than as an attempt to compel me, by *by* fear of personal consequences, to interfere with another independent

officer of the Government, in the discharge of his appropriate duty. It is scarcely necessary to say, that such a threat is as impotent as the attempt to execute it will be unnecessary and vindictive.

That you may not proceed in this matter under any mistake as to what I have done, or omitted to do, I herewith send you a copy of my letter to the auditor transmitting the solicitor's award.

Very respectfully, your obedient servant,

AMOS KENDALL.

No. 17.

Amos Kendall to Wm. B. Stokes, declining payment of $40,000.

POST OFFICE DEPARTMENT, *March* 29, 1838.

WM. B. STOKES, esq., present:

SIR: Your letter of yesterday is just at hand. I have not time to comment on some of its positions as I would, under other circumstances, be induced to do.

The money which I paid in consequence of the solicitor's award, as mentioned in my letter to the President, was *paid upon the report of the auditor;* and if he had not reported it due to you, *I could not have paid it.* The ground that I could not enter these credits was never "abandoned" by me, whatever may have been said or done by the United States counsel, because I could not abandon it without an abandonment of the truth. In my letter to the auditor, of the 15th November last, communicating a portion of the solicitor's award, I did not *direct*, or even request, him to enter the credits; and in mine of the 12th December, on the same subject, I confined myself to a single request. In neither of those cases did I assume the power to direct or control him in the discharge of his official duties; and if, upon examination of the subject, he had believed that you were not entitled to the credits, you could not have been paid, my letters notwithstanding. The same "*ministerial act*" which I then performed, I have never repented; and when he shall report a sum due, it will probably be paid on the amount of his report, [as it] was in each of those cases. But you require me to *control* the auditor—to *compel* him to enter certain credits—to *compel* him to report a sum due; and because I refuse to do that which I have obviously no power to do, or to make myself guilty of usurpation by attempting it, you threaten me with further proceedings in court.

I did not mean that *you* are "impotent." I meant that your threat was impotent, to make me perform an impossibility or attempt an usurpation. I have not charged you with "vindictiveness" as to the *fact;* I know not whether you will be justly so chargeable *for the future.* I do know, and you know, that the action of the auditor *ought not*, and, I trust, *will not*, be influenced, in the slightest degree, by any proceeding against me. And the country will judge whether a proceeding, which *ought* not, and *will* not

have the slightest practical effect, deserves the epithet of "vindictiveness" or not.

In conclusion, I have only to say, that I have done all that you have a right to demand of me by the decisions of the courts; and having no further power over the subject, until the auditor's report be presented to me, I trust that you will abandon the attempt to make me assume a power not *ministerial*—a power to direct and control others over whom I have no authority.

Very respectfully, your obedient servant,

AMOS KENDALL.

No. 18.

R. S. Coxe & M. St. C. Clark transmit a communication from W. B. Stokes.

Hon. AMOS KENDALL, *Postmaster General:*

SIR: In compliance with the wishes of "our client," William B. Stokes, we transmit to you the enclosed communication from him. He has now left the adjustment of this business in our hands, having been disappointed in obtaining himself that result, which he had most anxiously desired to effect in a conciliatory manner. We have, at his special request, abstained from the further prosecution of the mandamus until this time; but, unless we shall receive such an intimation from you, as will preclude the necessity for further action, shall feel ourselves compelled, during to-morrow, to move the court on the subject.

Your obedient servants,

RICH'D S. COXE,
MW. ST. CLAIR CLARK.

March 28th, 1838.

Hon. AMOS KENDALL, *Postmaster General:*

SIR: I have the honor to acknowledge the receipt of your letter of this date; and that I may discharge a duty to myself, against the charges therein, of attempting to compel you, by fear of personal consequences, to interfere with another independent officer of the Government in the discharge of his duties, and of impotency, and of vindictiveness, I have requested our counsel to proceed no further to-day, that I may vindicate myself from those harsh charges.

I do not think it necessary to advert to my long services in the Post Office Department, and to the harmony which has existed between your predecessors and our concern for nearly twenty years, to refute those charges. I conceive it only necessary to refer to our conduct and course of action for the last three years, oppressed, as we have been, by you since the unhappy controversy, into which my concern was driven with you to your present situation.

In what instance, let me ask you, have we, or either of us, shown towards your department impotency or malignity? The conduct of each of us is before the people, (or will be,) and to the people I am willing to submit our conduct in this controversy.

The apparent determination of your letter may be fraught with serious consequences to us. My object in coming here is to obtain from you an amount of money which you can no longer consider us as not entitled to; and it is my desire, and has been, to obtain this payment from you with all possible delicacy and kind feelings.

If possible to effect this object, I will proceed (with the advice of my counsel) to make such explanations as may tend to correct some errors which you have fallen into, and then to recommend such a course of conduct as may bring the whole subject to an end, without difficulty or delay.

In your letter just received, you say: "You know, very well, that I have no power to control the auditor's official action, to compel him to enter, or credit, or report a balance; and you know, also, that I cannot pay a sum of money otherwise than in pursuance of his report." The honorable Postmaster General exacts *so* much from me, for I think I am warranted in saying, that no one can *know* what powers the head of your department claims, unless from his own assumption or concession.

The plea of want of power, as already quoted, was made originally by your counsel, as well as by yourself, in answer to the alternative mandamus before the circuit court, overruled by that court, and *explicitly* abandoned as untenable by them before the Supreme Court of the United States.

In addition to the above, I refer you to your letter of the 27th December, 1836, to the President of the United States, in which you say, "In obedience to the mandate of the law, I have paid these gentlemen $122,101 46, although I have yet to be convinced that they had the least claim, in law or equity, to one-sixth part of that sum; when the law requires it of me, I shall with equal promptitude pay the remaining $40,625 59."

The "ministerial duty" which the act of Congress enjoins on you, and which the decision of the circuit and Supreme Court imperiously require at your hands, is, to give as of the day when the award was made. In this, I think I quote the only language of the chief justice. This is all that we have ever asked, and all that I now demand.

To this extent, you have fully recognised your duty under the law, and exercised the powers now claimed from you by your orders to the auditor, of 12th November and 12th December, 1836, wherein you direct him to pass the whole amount of the solicitor's award, heretofore paid to us, and also prescribe to him the manner in which the credits are to be given, and the moneys are to be paid.

In conclusion, in respect to the epithets "impotence" and "vindictive," which you have been pleased to apply to my letter last addressed to you, I take the liberty of remarking, that feeling ourselves "impotent" to obtain from you the justice to which we were entitled, we appealed reluctantly to the arm of the law for redress, and we defy you, throughout the whole course of our career, to

point out any indication of "vindictiveness," other than a disappointed man might infer from our claims having been sustained by unanimous decision of the twelve judges who have passed between you and ourselves.

I herewith send you a statement of our claim, and leave the whole matter in the hands of Messrs. Coxe and Clark, our counsel, to whom you may refer if you think proper.

With due respect, WM. B. STOKES.

WASHINGTON, *March* 28, 1838.

Statement of account from Wm. B. Stokes to Postmaster General.

Hon. Amos Kendall, Postmaster General, Dr. to Stockton & Stokes, Lucius W. Stockton, and D. Moore.

To amount of solicitor's award, dated 12th November, 1836	$110,140 00	
By cash paid on 12th November, 1836	83,278 00	
		26,862 00
To interest on $26,862 for one month, from 12th November to 12th December, 1836		134 31
		26,996 31
To amount of 2d award of the solicitor, dated 3d November, 1836		51,433 93
To interest on $51,433 93 for 20 days, 23d November to 12th December, 1836		169 12
		78,599 36
By cash paid 12th December, 1836		38,823 46
		39,775 90
To interest on $39,775 90 for 1 year 3 months and 16 days, from 12th December, 1836, to 28th March, 1838		3,086 18
		42,862 08
Costs, as per clerk's statement		354 10
Due the parties		$43,216 18

No. 19.

Amos Kendall to Messrs. Coxe & Clark.

POST OFFICE DEPARTMENT, *March* 29, 1838.

Messrs. R. S. COXE AND M. ST. C. CLARK.

GENTLEMEN: I have received your letter of yesterday, enclosing an account in favor of Stockton & Stokes, L. W. Stockton, and

Daniel Moore, against the "honorable Amos Kendall, Postmaster General."

No accounts are kept in the Post Office Department, and the accounts of that department are opened in "the books of" the Auditor of "the Treasury for the Post Office Department," with "the United States," and not with "the Postmaster General."

I have not only no books, but I have no power to settle claims arising in this department, that power being vested in the auditor, and no money to pay them with, the revenues of the department being required to be paid into the Treasury, whence it cannot be drawn, but by warrants issued upon reports of the auditor, setting forth sums due from the United States on account of the Post Office Department.

I have, therefore, as in all other cases, referred the account transmitted by you to the auditor, whose duty it is to report any sum which may be due to your clients; and when he shall report any sum due, I shall proceed to draw warrants or drafts for its payment according to law.

I trust this is "such an intimation" as "will preclude the necessity for further action" in the matter to which you refer.

Respectfully, your obedient servant,

AMOS KENDALL.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Amos Kendall, Postmaster General of the United States, greeting:

Whereas the Congress of the United States of America did enact and pass a certain act of Congress, which was approved of by the President of the United States on the second day of July, in the year of our Lord eighteen hundred and thirty-six, in and by which said act of Congress it was, among other things, enacted and provided, that the Solicitor of the Treasury be, and he is hereby, authorized and directed to settle and adjust the claims of William B. Stokes and Richard C. Stockton, of Maryland, and Lucius W. Stockton and Daniel Moore, of Pennsylvania, for extra services performed by them as contractors for carrying the mail under and by virtue of certain contracts therefor, by them alleged to have been made and entered into with them by William T. Barry, late Postmaster General of the United States; and for this purpose to enquire into and determine the equity of the claims of them, or any of them, for or on account of any contract, or additional contract with the said Postmaster General, on which their payments may have been suspended by the present Postmaster General, and to make them such allowance therefor as, upon a full examination of all the evidence, may seem right, according to the principles of equity; and that the Postmaster General be, and he is hereby, directed to credit such mail contractors with whatever sum or sums of money, if any, the said solicitor shall so decide to be due to them for and

on account of any such service or contract. And the solicitor is hereby authorized to take testimony, if he shall find it necessary to do so; and that he report to Congress, at its next session, the law and the facts upon which his decision has been founded.

And whereas, after the passage of the said act of Congress, Virgil Maxcy, esquire, being the Solicitor of the Treasury, did assume upon himself the power and authority created and conferred thereby, and did proceed to execute the same on his part, and did settle and adjust the claims of the said William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, as mentioned and provided in and by said act of Congress, and in pursuance of the provisions of the same, and upon a full examination of all the evidence, did make them allowances on account of said contracts, or additional contracts, made and entered into with them by William T. Barry, late Postmaster General of the United States, and in which their pay had been suspended by yourself, then and now the Postmaster General of the United States, according to the principles of equity; and did decide, finally, that there was due to the said parties mentioned in the said act of Congress, or to some of them, upon the grounds specified in said act, on account of said services or contracts, the sum of one hundred and sixty-one thousand five hundred and sixty-three dollars and eighty-nine cents, and did publish and deliver his said final award and decision to you, as Postmaster General of the United States, in or about the 12th and 23d days of November, in the year eighteen hundred and thirty-six; and subsequently, to wit, on or about the 26th day of December, in the year aforesaid, in further pursuance and execution of said act of Congress, the said Virgil Maxcy, Solicitor of the Treasury as aforesaid, did report to Congress, it being at its next session after the passage of the aforesaid act, his said award and decision, and the law and the facts upon which the same had been founded.

And whereas the said award and decision so made was, as aforesaid, duly notified to you, as the Postmaster General of the United States, and it thereby became your duty, and by the said act of Congress you are now thereupon required, to credit the said mail contractors with the sum of money which the said solicitor had, as aforesaid, decided to be due to them for and on account of such services or contracts; which requirements you in part only complied with, by carrying to their credit the sum of one hundred and twenty-two thousand one hundred and one dollars and forty-six cents.

And whereas you did omit, refuse, and neglect, and still do refuse, omit, and neglect, notwithstanding said notice and requirement, to credit the said mail contractors with the residue of said sum, amounting to thirty-nine thousand four hundred and seventy-two dollars and forty-seven cents, so awarded and decided to be due to said mail contractors.

And whereas, heretofore, to wit, the said circuit court, at the instance of relators, by their counsel, did grant a rule requiring you

to show cause, if any you had, among other things, why a writ of mandamus from the said circuit court should not be awarded and issued to you, commanding you fully to comply with, and execute on your part, the aforesaid act of Congress of July 2d, 1836, by crediting the said mail contractors with the full and entire sum so awarded and decided as aforesaid to be due to them by the said Solicitor of the Treasury, in conformity with the true intent and meaning of said award and decision; which said rule was served on you on the 26th day of May, 1837.

And whereas you did fail to appear, according to the said rule, and did not show any cause why the said writ should not be issued as prayed.

And whereas the said circuit court, upon consideration of the said matters, and of the arguments of counsel on the part of said relators, in this behalf, was of opinion that you were bound to perform and execute on your part the said act of Congress, by crediting the said mail contractors with the full and entire sum so awarded to be due to them by the Solicitor of the Treasury, in conformity with the true intent and meaning of the said award and decision, and that a writ of mandamus should issue accordingly.

Therefore, you are commanded and enjoined that, immediately after the receipt of said writ, and without delay, you do fully comply with, obey, and execute, on your part, the aforesaid act of Congress of July 2d, 1836, by crediting said mail contractors with the full and entire sum so awarded and decided to be due to them, as aforesaid, by the said Solicitor of the Treasury, according to the true intent and meaning of said award and decision, so that complaint be not again made to the said circuit court; and that you certify perfect obedience to, and due execution of, this writ to the said circuit court on Saturday, the 10th day of June, 1837; or that you do, at 10 o'clock of that day, show cause to the said court why you have not so done as commanded.

And whereas the said writ was duly served on you the seventh day of June, 1837.

And whereas, afterwards, to wit, on the 24th day of June, 1837, you did certify and return certain reasons why the said court should not award a writ of mandamus in this behalf.

And whereas, afterwards, to wit, at the same session of the said circuit court, upon consideration of your said return, and of the reasons therein contained against the awarding and issuing of the said writ of mandamus; and upon consideration of the arguments of counsel, as well on your behalf, showing cause as aforesaid, as on behalf of said relators, it was considered by the court that you had certified and returned to the said court an insufficient cause against the same; the said circuit court being of opinion, and having determined and adjudged upon the matter aforesaid, that you were bound to credit the said relators as aforesaid.

And whereas a writ of error was sued out by the said Amos Kendall, removing the cause, and the proceedings therein, to the Su-

preme Court of the United States; upon which said writ of error such proceedings were had as that the judgment of said circuit court was affirmed with costs, as by the mandate of said Supreme Court will appear.

And whereas the said circuit court, on motion of Richard S. Coxe, esquire, of counsel for said William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, did, on the 30th day of March, 1838, on consideration of the premises, order and direct that an alias peremptory writ of mandamus should issue to said Amos Kendall, Postmaster General of the United States, commanding him as before he was commanded.

Now you are hereby again commanded, as you were formerly commanded and enjoined, that immediately after the receipt of this writ, and without further delay, you do fully comply with, obey, and execute the aforesaid act of Congress, as before you were commanded; and that you do certify perfect obedience to, and due execution of, this writ to the said circuit court, on Tuesday, the third day of April next, at 10 o'clock in the morning of that day. Thereof fail not at your peril, and have you then and there this writ.

Witness the honorable William Cranch, chief judge of our said circuit court, the 29th day of March, 1838.

Issued the 30th day of March, 1838.

W. BRENT, *Clerk.*

(R. S. COXE, Esq.)

No. 21.

UNITED STATES, at the relation of WILLIAM B. STOKES, RICHARD C. STOCKTON, and others,
vs.
AMOS KENDALL, Postmaster General of the United States.

Mandamus.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to Amos Kendall, Postmaster General of the United States, greeting:

Whereas the Congress of the United States of America did enact and pass a certain act of Congress, which was approved by the President of the United States on the second day of July, in the year of our Lord eighteen hundred and thirty-six; in and by which said act of Congress it was, among other things, enacted and provided, that the Solicitor of the Treasury be, and he is hereby, authorized and directed to settle and adjust the claims of William B. Stokes and Richard C. Stockton, of Maryland, and Lucius W. Stockton and Daniel Moore, of Pennsylvania, for extra services

performed by them as contractors for carrying the mail under and by virtue of certain contracts therefor, and by them alleged to have been made and entered into with them by William T. Barry, late Postmaster General of the United States; and for this purpose to enquire into and determine the equity of the claims of them, or any of them, for or on account of any contract, or additional contract, with the said Postmaster General, on which their payments may have been suspended by the present Postmaster General; and to make them such allowance therefor as, upon a full examination of all the evidence, may seem right, according to the principles of equity; and that the Postmaster General be, and he is hereby, directed to credit such mail contractors with whatever sum or sums of money, if any, the said solicitor shall so decide to be due to them for and on account of any such service or contracts; and the solicitor is hereby authorized to take testimony, if he shall find it necessary to do so; and that he report to Congress, at its next session, the law and the facts upon which his decision has been founded.

And whereas, after the passage of the said act of Congress, Virgil Maxcy, esquire, being the Solicitor of the Treasury, did assume upon himself the power and authority created and conferred thereby, and did proceed to execute the same on his part, and did settle and adjust the claims of the said William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, as mentioned and provided in and by said act of Congress, and in pursuance of the provisions of the same, and upon a full examination of all the evidence, did make them allowances on account of said contracts, or additional contracts, made and entered into with them by William T. Barry, late Postmaster General of the United States, and on which their pay had been suspended by yourself, then and now the Postmaster General of the United States, according to the principles of equity, and did decide, finally, that there was due to the said parties mentioned in the said act of Congress, or to some of them, upon the grounds specified in said act, on account of said services or contracts, the sum of one hundred and sixty-one thousand five hundred and sixty-three dollars and eighty-nine cents, and did publish and deliver his said final award and decision to you, as Postmaster General of the United States, on or about the 10th and 23d days of November, in the year eighteen hundred and thirty-six; and subsequently, to wit, on or about the 26th day of December, in the year aforesaid, in further pursuance and execution of said act of Congress, the said Virgil Maxcy, Solicitor of the Treasury as aforesaid, did report to Congress, it being at its next session after the passage of the aforesaid act, his said award and decision, and the law and the facts upon which the same had been founded.

And whereas, the said award and decision so made was, as aforesaid, duly notified to you, as the Postmaster General of the United States, and it thereby became your duty, and by the said act of Con-

gress you were thereupon required to credit the said mail contractors with the sum of money which the said solicitor had, as aforesaid, decided to be due to them for and on account of such services or contracts; which requirements you in part only complied with, by carrying to their credit the sum of one hundred and twenty-two thousand one hundred and one dollars and forty-six cents.

And whereas, you did omit, refuse, and neglect, and still do refuse, omit, and neglect, notwithstanding said notice and requirement, to credit the said mail contractors with the residue of said sum, amounting to thirty-nine thousand four hundred and seventy-two dollars and forty-seven cents, so awarded and decided to be due to said mail contractors.

And whereas, heretofore, to wit, at a session of the circuit court of the District of Columbia, for the county of Washington, the said circuit court, at the instance of relators, by their counsel, did grant a rule requiring you to show cause, if any you had, among other things, why a writ of mandamus from the said circuit court should not be awarded and issued to you, commanding you fully to comply with, and execute on your part, the aforesaid act of Congress of July 2d, 1836, by crediting said mail contractors with the full and entire sum so awarded and decided, as aforesaid, to be due to them by the said Solicitor of the Treasury, in conformity with the true intent and meaning of said award and decision, which rule was served on you on the 26th day of May, 1837.

And whereas you did fail to appear according to the said rule, and did not show any cause why the said writ should not be issued as prayed.

And whereas the said circuit court, upon consideration of the said matters, and of the arguments of counsel on the part of said relators in this behalf, was of opinion that you were bound to perform and execute, on your part, the said act of Congress, by crediting the said mail contractors with the full and entire sum so awarded to be due to them by the Solicitor of the Treasury, in conformity with the true intent and meaning of the said award and decision, and that a writ of mandamus should issue accordingly.

Therefore you were commanded and enjoined that, immediately after the receipt of said writ, and without delay, you do fully comply with, obey, and execute, on your part, the aforesaid act of Congress of July 2d, 1836, by crediting said mail contractors with the full and entire sum so awarded and decided to be due to them, as aforesaid, by the said Solicitor of the Treasury, according to the true intent and meaning of said award and decision, so that complaint be not again made to the said circuit court; and that you certify perfect obedience to, and due execution of, this writ to the said circuit court, on Saturday, the 10th day of June, 1837, or that you do, at 10 o'clock of that day, show cause to the said court why you have not so done as commanded.

And whereas the said writ was duly served on you on the 7th day of June, 1837.

And whereas, afterwards, to wit, on the 24th day of June, 1837, you did certify and return certain reasons why the said court should not award a writ of mandamus in this behalf.

And whereas, afterwards, to wit, at the same session of the said circuit court, upon consideration of your said return, and of the reasons therein contained against the awarding and issuing the said writ of mandamus, and upon consideration of the arguments of counsel, as well on your behalf, showing cause as aforesaid, as on behalf of said relators, it was considered by the court that you had certified and returned to the said court an insufficient cause against the same, the said circuit court being of opinion, and having determined and adjusted upon the matter aforesaid, that you were bound to credit the said relators as aforesaid.

And whereas a writ of error was sued out by the said Amos Kendall, removing the cause and the proceedings therein to the Supreme Court of the United States, upon which said writ of error such proceedings were had, as that the judgment of said circuit court was affirmed with costs, as by the mandate of said Supreme Court will appear; and whereas the said circuit court, on motion of Richard S. Coxe, esquire, of counsel for said William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, and on the 30th day of March, 1838, on consideration of the premises, order and direct that an alias peremptory writ of mandamus should issue to said Amos Kendall, Postmaster General of the United States, commanding him as he was before commanded.

Now you are hereby again commanded, as you were formerly commanded and enjoined, that, immediately after the receipt of this writ, and without further delay, you do fully comply with, obey, and execute the aforesaid act of Congress, as before you were commanded, and that you do certify perfect obedience to, and due execution of this writ, to the said circuit court, on Tuesday, the third day of April next, at ten o'clock in the morning of that day. Thereof fail not, at your peril, and have you then and there this writ.

Witness the honorable William Cranch, chief judge of our said court, the 29th day of March, 1838.

Issued the 30th day of March, 1838.

R. S. Coxe, esq. W. BRENT, *Clerk.*

Post Office Department, *April 3d*, 1838.

Having communicated the awards of the Solicitor of the Treasury, referred to in the within writ, to the Auditor of the Treasury for the Post Office Department, who has the legal custody of the books on which the accounts of this department are kept, I have received from him official information, that the balance of said awards, viz: thirty-nine thousand four hundred and seventy-two dollars and forty-seven cents, ($29,472 47,) has been entered to the credit of the claimants on said books.

AMOS KENDALL, *Postmaster General.*

No. 22.

Statement of John Suter.

Statement exhibiting the division of pay under the contract of Richard C. Stockton and William Neil, for carrying the mails on sundry routes, from 1st January, 1832, to 31st December, 1835, as per document No. 1 a, accompanying the report of the Solicitor of the Treasury to the House of Representatives, No. 52, 25th Congress, 1st session.

To R. C. STOCKTON:

Route 1,201—Cumberland to Wheeling,		
1,389—Baltimore to Cumberland,		at $6,200 per ann.
1,390—Washington to Fredericktown,		
1,400—Fredericktown to Winchester,		
Deducting route 1,400 - - -	1,650	
	$4,550	

To LUCIUS W. STOCKTON:

Route 1,202—Washington, P., to Steubenville, O., at $800 per ann.

To WILLIAM NEIL & Co.:

Route 1,501—Wheeling to Zanesville,		
1,502—Zanesville to Cincinnati,		
1,503—Springfield to Cincinnati,		
1,504—Zanesville to Maysville,		
1,545—Bucyrus to Sandusky,		
1,574—Bainbridge to Cincinnati,		
1,579—Springfield to Lower Sandusky,		
1,580—Columbus to Upper Sandusky,		
1,586—Chilicothe to Portsmouth,		at $30,000 pr. ann.
1,591—Chilicothe to Columbus,		
1,596—Dayton to Indianapolis,		
1,598—Lower Sandusky to Sandusky,		
1,600—Columbus to Sandusky,		
1,605—Mt. Vernon to Cleveland,		
1,610—Lancaster to Newark,		
1,614—Lancaster to Lebanon,		
1,629—Hamilton to Rushville & Eaton,		
	$39,000	pr. ann.

NOTE.—The accounts were kept on the books of the Post Office Department, according to the foregoing division of the routes and pay, as made by the parties to the contract; and all subsequent additional allowances, or curtailments of pay, were made to, and deducted from, the pay of the party to whom the respective routes on which they were made were originally assigned.

JNO. SUTER.

January 10th, 1842.

No. 23.

Copy of decisions and opinions referred to in Mr. Key's opinion.

1.

It being represented to me, by Major T. Cross, that the within account of $960\frac{32}{100}$ was credited and paid to him, by allowance and direction of the late Secretary of War, it is proper that it should be now allowed. It having been paid from the contingent fund, which is exclusively under the control of the Secretary of War, I do not feel myself called upon, or that it is proper, to reverse any decision that he has made. Accordingly, the account is admitted.

JNO. H. EATON.

23*d April*, 1831.

2.

Extract from the opinion of the Attorney General of September 10th, 1831, on the claim of Major Thorp.

"When a claim has been presented, and, upon the whole evidence, rejected by the accounting officers, and upon appeal to the Secretary of War their decision has been confirmed, I doubt whether it is regular for his successor in that office to review his decision. The party may carry his appeal from the Secretary of War before the President, and if the President affirms the decision, his remedy, if he supposes injustice is done to him, must be found in an application to Congress. For if a final decision, upon a knowledge of all the facts, made by an officer authorized to decide on claims against the Government, is liable to be opened and reviewed by his successor in office, every change in the office will produce a new hearing of the claim, and the accounts of the Government always remain open and unsettled. An erroneous decision of the officer in favor of the claimant, and the payment of the money becomes conclusive on their successors in office and the Government; and as the claimant has the right of appeal, in the first place, to the superior officers of the executive branch of the Government, and afterwards to Congress, I do not perceive any injustice in making the decisions of the officers against a claimant equally binding on their successors. I do not mean to embrace in this rule decisions founded on mistakes in matters of fact, arising from errors in calculation, or the absence of material testimony afterwards discovered or produced.

(Signed) R. B. TANEY.

3.

DEPARTMENT OF WAR, *January 11th*, 1832.

DEAR SIR: I return the papers in Mr. Thomson's case. It seems his case was decided by General Eaton. I have adopted it as an invariable principle, not to examine a case settled by any of my

predecessors, without the disclosure of some new facts or circumstances not known at the time of the decision. Any other rule would introduce the utmost confusion, and open for reconsideration all claims rejected by the department since the organization of the Government. It is impossible for me, therefore, to interfere. Mr. Thomson has no remedy but in an application to the President or to Congress.

Very, &c., LEWIS CASS.

Hon. CHILTON ALLEN, *Ho. of Reps.*

No. 4.

DEPARTMENT OF WAR, *January 12th*, 1832.

SIR: I have had the honor to receive your letter of the 9th inst., together with the accompanying papers. The latter I return to you.

The first question presented to me after I came into this department, involving a reconsideration of the decision of any of my predecessors, rendered it necessary for me to examine that subject carefully and deliberately. The result was a settled conviction that I ought not to examine any such decision, unless circumstances, not known at the time it was made, were disclosed. To this rule I have adhered without exception, and I think the reasons in favor of it are so obvious that its justice will not be impugned. A contrary principle would unsettle all the decisions of the department, adverse to the claims of individuals, from the organization of the Government; and this, too, when the facts of the case and the reasons of the decision could not be as well known or investigated as when the whole subject was first presented. I cannot, therefore, take up the claim which has been made by the widow of the late Doctor Maupin for his services, as it has already been decided by my immediate predecessor. I have the consolation, however, of knowing that if his views or mine are incorrect, an appeal to the President or an application to Congress will assure justice to the party.

Yours, &c., LEWIS CASS.

Hon. THOMAS NEWTON, *Ho. of Reps.*

No. 24.

S. R. Hobbie's statement in the case of Stockton and Stokes vs. Amos Kendall, made under agreement of counsel, with the blank form of contract used in 1835–'6–'7, *&c.*

On Stockton's part of Stockton and Neil's contract, dated 15th October, 1831, to wit, on the routes this side of Wheeling, the pay was as follows:

In contract as advertised - - - -	$7,000
Improvement - - - - - -	8,950
First extra allowance - - - -	6,750
Second " " - - - -	9,812
Third " " - - - -	6,400
Fourth " " - - - -	900
Fifth " " or the 50 per cent. allowance	19,254
Per annum -	59,066
Pay clerk states there was a further additional allowance passed to contractors' credit on the pay books, for conveying mail from Baltimore to Frederick on the railroad - - - -	2,046
	61,112
Pay under contracts made in 1835, which commenced operation 1st January, 1836, and continued in operation till 30th June, 1837, on the same roads -	28,652
Pay from 1st July, 1837, to 30th June, 1840: For *fast mail service* from Baltimore to Wheeling on National road - - - - - -	65,800
On the other side routes, same amount for them as in in preceding statement - - - -	3,350
Per annum -	69,150
Pay from July 1st, 1840: For *railroad* and *fast mail* service from Baltimore to Wheeling $64,125	
On the side routes - - - 1,740	
	65,865

Under the first contract, from 1832 to 1835, inclusive, there was a stipulation for the use of a stage coach suitable for seven passengers, and the mail to be carried in the boot to the coach.

The same mode of conveyance was to be had under the second contract, from the 1st January, 1836, to 30th June, 1837.

Under the contracts commencing the 1st July, 1837, and those also of 1840, the mails were expedited. The contractor stipulated to make the extraordinary speed of 7 miles to the hour, to appropriate the whole body of the coach to the mails, all passengers being excluded from it, and only three being allowed on the outside of the coach.

For a period of nine months, commencing 1st July, 1837, there was run from Washington, by Wheeling, to Cincinnati, under a special act of Congress, an express mail carrying only letters, on

which triple postage was paid, and slips from newspapers. This was an extraordinary mail arrangement, dissimilar to any thing on said road before or since.

The cost of that express mail from Washington to Wheeling was about $29,000.

Subjoined is the blank form of a contract used in 1835-'6-'7, and desired in reference to the general provisions in Waller & Co.'s and in Stockton & Stokes' contracts of that period.

S. R. HOBBIE.

No. $

This contract, made the day of , in the year one thousand eight hundred and thirty , between , contractor for carrying the mails of the United States, of one part, and the *Postmaster General of the United States*, of the other part, witnesseth, that the said parties have mutually covenanted as follows, viz: The said contractor covenant with the Postmaster General—

1. To carry the mail of the United States from

at the rate of dollars for every quarter of a year during the continuance of this contract; to be paid by postmasters on the route above mentioned, or otherwise, at the option of the Postmaster General, in the months of *May*, *August*, *November*, and *February*.

2. That the mail shall be duly delivered at, and taken from, each post office now established, or that may be established, on the route embraced on this contract; that it shall be conveyed on this route in the time specified in the annexed schedule and in a secure and safe manner, free from wet or other injury, in a secure dry boot or box under the driver's seat, if the mail is carried by stage or coach, or under a sufficient oil cloth or bear skin, when carried on horseback or sulkey, as hereinbefore designated, or hereafter directed by the Postmaster General; that it shall be duly delivered into the post office at the end of the route, and into the post office at the place at which the carrier stops at night, if one is there kept, and if no office is there kept, it shall be locked up in some secure place, at the contractor's risk.

3. That if the contractor shall run a stage or other vehicle more rapidly or more frequently than he is required by the contract to carry the mail, he shall give the same increased celerity and frequency to the mail, and without increase of compensation.

4. That the contractor, if on a stage or coach route, shall, in the conveyance of passengers, give a preference to those who are brought in the connecting mail lines, over those travelling in any other, so that connecting mail stage routes shall form continuous travelling lines.

5. That he shall not, by himself or his agent, transmit, or be concerned in transmitting commercial intelligence, by express, more rapidly than by mail.

6. That the contractor will, if required by the Postmaster General, collect quarterly of postmasters on said route the balances due from them to the General Post Office, and faithfully render an account thereof to the Postmaster General, in the settlements of quarterly accounts, and will pay over to the General Post Office all balances remaining in hands.

7. That in every case of failure to perform the trip, whatever may be the cause, there shall be a forfeiture of the pay for the trip; and a failure to arrive at a post office so long after the time set in the schedule as to lose the connexion with a depending mail, shall be considered as equal to a whole trip lost. Which forfeiture may be increased into a penalty not exceeding dollars, according to the circumstances under which the failure occurred.

8. That the contractor shall be subject, for failure to take or deliver a mail, or any part of a mail, for suffering the mail to be wet, or otherwise injured, or lost, or destroyed, to a penalty of dollars, which may be increased to dollars, according to the size and importance of the mail, and the circumstances under which the failure occurred.

9. That a fine not less than the tenth part, and not exceeding the half of the price of a trip, may be imposed for each ten minutes' delay of the mail to arrive at the time specified in the schedule.

10. That the contractor shall be answerable for the persons to whom shall commit the care and transportation of the mail, and accountable for any damages which may be sustained through their unfaithfulness or want of care; and that he will discharge any driver or carrier of said mail whenever required to do so by the Postmaster General.

11. That the schedules being arranged so as to allow seven minutes to each post office for opening and closing the mails generally, and one hour to the distributing post offices, the Postmaster General is to have, nevertheless, the power of extending the time, on allowing the like extension to the contractor, if he shall claim it.

12. That the Postmaster General may increase the speed and alter the times of arrival and departure fixed by the schedules, and alter the route, he making adequate compensation for any expense occasioned thereby, not, however, "to exceed the exact proportion of the additional amount to the additional duties required."

13. That the Postmaster General may curtail the service, or dispense with it entirely, he allowing one month's extra pay upon the amount deducted; in case he wishes to place on the route a higher degree of service than is contracted for, first offering the privilege, to the contractor on the route, of performing such higher service, on the terms that can be obtained; or whenever he shall deem it expedient to lessen the service, or to leave such route, or any part of it, out of operation, or to carry the mail by steamboat or railroad cars: provided that reduction of compensation, in consequence of reduc-

tion of service, shall not exceed the exact proportion which the service dispensed with bears to the whole service.

14. That the Postmaster General may annul the contract for repeated failures of the contractor to perform any of the stipulations of the contract; for violating the post office law, or disobeying the instructions of the department; or for assigning his contract without the previous consent of the Postmaster General first obtained.

15. The said Postmaster General covenants with the said contractor to pay as aforesaid, at the rate aforementioned, quarterly, in the months of *May*, *August*, *November*, and *February*.

Provided always, That this contract shall be null and void, in case the contractor, or any person that may become interested in this contract, directly or indirectly, shall become a postmaster or an assistant postmaster. No member of Congress be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon; and this contract shall, in all its parts, be subject to the terms and requisitions of an act of Congress, passed on the 21st day of April, in the year of our Lord one thousand eight hundred and eight, entitled "An act concerning public contracts."

And it is mutually covenanted and agreed, by the said parties, that this contract shall commence on the day of , 183 , and continue in force until the 31st day of December, inclusively, which will be in the year one thousand eight hundred and thirty , unless the Postmaster General shall decide to terminate this contract on the 30th September, 1839, or the 30th June, 1839, which he has the right to do on forwarding six months' previous notice of his intention to determine this contract on one of those days.

In witness whereof, they have hereunto interchangeably set their hands and seals the day and year first above written.

Signed, sealed, and delivered in presence of

T. H.

This schedule subject to alteration by the Postmaster General, agreeably to the provision contained in the twelfth section of the contract.

I, being appointed a mail contractor, do swear that I will faithfully perform all the duties required of me, and abstain from every thing forbidden by the law in relation to the establishment of post offices and post roads within the United States. And I do solemnly swear that I will support the Constitution of the United States.

Sworn before the subscriber for the of this day of A. D.

Know all men by these presents, that we,
as principal and
[the postmaster will add the sureties' names]
as securities,
are held and firm bound unto the Postmaster General of the United States of America, in the just and full sum of
dollars, value received, to be paid in to the Postmaster General, or his successors in office, or to his or their assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals: dated the [the postmaster will insert the day, month, &c.] day of
in the year of our Lord one thousand eight hundred and thirty-

The condition of this obligation is such, that, whereas the above bounden by a certain contract, bearing date the day of
in the year of our Lord one thousand eight hundred and thirty-
, covenanted with the said Postmaster General to carry the mail of the United States from
commencing the
day of , one thousand eight hundred and thirty and ending the day of
which will be in the year one thousand eight hundred and

Now, if the said
shall well and truly perform the covenants in the said indenture expressed, on part to be performed, and shall account for all penalties, and shall promptly repay all balances that may, at any time, be found due from
, then this bond is to be void; otherwise to remain in full force.

Signed, sealed, and delivered in the presence of

No. 25.

Letter from A. K. to Col. Gardner, the Auditor, dated Nov. 12th, 1836—the same date with the first part of the solicitor's award, and requesting that $83,278 be paid pursuant thereto.

POST OFFICE DEPARTMENT, *November 12th*, 1836.

SIR: I have this day received the award of Virgil Maxcy, esq., Solicitor of the Treasury, made in pursuance of the act of Congress "for the relief of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore, and from the extract which follows, it appears that those parties are entitled to credits amounting to the sum of eighty-three thousand two hundred and seventy-eight dollars.

The "claims as made by Mr. Stockton are as follows, to wit:"

"1st. For increased speed on said three routes, (Nos. 1,201, 1,389, and 1,390,) from the 1st January, 1834, to the 31st December, 1835, according to the rate allowed at the Post Office Department, and paid for from the 1st January, 1832, to the 31st December, 1833, that is $1,687\frac{50}{100}$ per quarter, amounting to	$13,500 00
2dly. For extra horses and postillions on the route from Baltimore to Wheeling, from 1st January, 1834, to the 31st December, 1835, according to the rate allowed and paid for during the two previous years, that is $2,453 per quarter, amounting to - -	19,624 00
3dly. For increased weight of mails 50 per centum of $38,508, the amount of all the payments and allowances together, for services on the route from Baltimore to Wheeling, from 1st January, 1832, till 31st December, 1835, being 4 years, at the rate of $19,254 per annum on 16 quarters, at $4,813$\frac{50}{100}$ per quarter, amounting to - - - - - -	77,016 00
4thly. For interest upon such sums from the Post Office Department, the payment of which has been suspended."	

"I have made a full examination of all the evidence touching the above mentioned claims, and considered, as well that which has been communicated by the Post Office Department and the Secretary of the Senate, as that received from the claimants, and collected by depositions, and obtained from published documents, and have decided that there are equitably due to the said Richard C. Stockton, on account of said claims, the following sums of money, viz:

"For part of the first mentioned claim for extra services, that is 5 quarters, commencing with the 1st January, 1834, and ending on the 31st March, 1835, at the rate of $1,687\frac{50}{100}$ per quarter, the sum of -	$8,437 50
"For part of the 2d claim above mentioned, that is, for 5 quarters, ending 31st March, 1835, at the rate of $2,453 per quarter, the sum of - - -	12,265 00
"For part of the 3d claim above mentioned, on account of increased weight of mails, that is, 50 per centum on all payments and allowances for 13 quarters, commencing with the 1st January, 1832, and ending on the 31st March, 1835, at the rate of $4,813$\frac{50}{100}$ per quarter, the sum of - - - -	62,575 50
"Making together, up to the 1st April, 1835, when the pay of said Stockton was suspended by the present Postmaster General, the total sum of - -	83,278 00"

In making payment of any balance which may arise from these credits, you will please first to discharge all the acceptances of the department in favor of R. C. Stockton, or Stockton and Stokes, held by banks, particularly the Bank of the Metropolis and Franklin Bank of Baltimore, and pay the balance, if any, in such way as may be most acceptable to the claimants.

A further award has been made by the solicitor, extending these allowances to the 31st December, 1835, the execution of which is held under advisement.

Respectfully, your obedient servant,
AMOS KENDALL.

C. K. GARDNER, esq.,
Auditor for the Post Office Department.

Deposition of General Andrew Jackson, referred to in plaintiff's 2d bill of exceptions, page 48.

1st. Please state whether you were President of the United States from the first day of January, 1835, to the fourth day of March, 1837, and whether, in the year 1835, you appointed Amos Kendall, the defendant in this cause, to the office of Postmaster General.

2d. Please state whether either the said Amos Kendall, or any person supposed to be authorized by him, applied to you for that appointment. Whether the offer of the appointment, to the defendant in this case, was entirely spontaneous on your part. Whether he objected to the acceptance of said appointment, giving his reasons therefor; and whether, in the end, he reluctantly undertook to discharge the duties of the office at your particular request.

3d. Please state if the said defendant consulted with you as to the principles on which it would be proper to administer the department. What were the principles of action which he supposed it would be necessary to adopt, in order to extricate the Post Office Department from its then embarrassed condition; and whether you know of any case in which friendship or ill will, either personal or political, induced him, the said defendant, to deviate from those principles.

4th. Did the said defendant report to you, as President of the United States, a few days after he had commenced to discharge the duties of Postmaster General, a number of extra allowances to mail contractors, made or entered by his predecessor a short time before he left the department, including heavy allowances to Messrs. Stockton & Stokes, which afterwards became the subject of legislation by Congress; and in reference to which an act was passed by Congress, and approved by you, entitled An act for the relief of William B. Stokes, Richard C. Stockton, Lucius W. Stockton, and Daniel Moore?

5. Did you suppose, at the time you approved the act, it related to, or embraced within its items or intent, any other claims than

such as had been allowed by William T. Barry, and suspended by the defendant above named?

6. Did the defendant above named consult you, as President of the United States, about the propriety of making the suspensions above referred to; and did not those suspensions receive your approval?

7. After an award had been made by Virgil Maxcy, then Solicitor of the Treasury Department, in favor of the plaintiffs in this case, in alleged pursuance of the act of Congress above referred to, did the plaintiffs complain to you that the defendant refused to comply fully with the award? And did they not, by writing, or otherwise, or through their friends and agents, or in all these ways, repeatedly apply to you for an order requiring the defendant fully to carry into effect the said award?

8. What course of conduct was adopted by you relative to those applications, and what were your reasons for that course? Please state whether, after the above named award was made, and after the defendant had refused to carry into execution a part thereof, on the ground that such part was beyond the terms of submission, you do or do not recollect that the Senate of the United States passed a resolution, expressive of the opinion that the defendant, as Postmaster General, was authorized to pay, and ought to pay, the full amount awarded to the plaintiffs in this case.

9. Did you suppose that the said resolution of the Senate altered, or could alter, the legal or official powers and duties of the defendant?

10. Did you, while President of the United States, or at any other time, perceive any thing in the conduct or language of the defendant, or otherwise, indicative of malice or ill-will towards the plaintiffs in this case, or indicative of any other feeling than an anxious desire, and inflexible resolution, to shield the funds of the Post Office Department from what he believed to be [an] unconscientious, unjust, and unlawful demand?

10. Please state any other facts or circumstances within your knowledge, indicative of the motives or intentions of the defendant, either in making the suspensions above referred to, or withholding a portion of the award, as above stated.

Suffered to be read in evidence.

In answer to the 1*st interrogatory this deponent answereth, that he was President of the United States from the first day of January*, 1835, *to the fourth day of March*, 1837, *and that in the year* 1835 *he appointed Amos Kendall, the defendant in this cause, Postmaster General.*

In answer to the 2d interrogatory, it is necessary for deponent to state the circumstances which led to the appointment of said defendant. Major William T. Barry was his predecessor. When it first came to the knowledge of deponent that the revenue of the

Post Office Department was insufficient to meet its pecuniary engagements, deponent was in Boston, on his eastern tour in 1833, and the Postmaster General was then absent from the department, by permission; having *resorted* to deponent, before he left Washington, that the business of the department was in good condition, and, under the superintendence of that excellent officer, Colonel Gardiner, would remain so during his absence; that his health was declining, and, to restore it, relaxation and change of climate were necessary. The intimation which deponent received at Boston, respecting the derangement in the finances of the department, was reiterated to him at the seat of Government in New Hampshire, and truly astonished him. It caused him to return forthwith to the city of Washington; and upon his arrival thereat he immediately sent for Colonel Gardiner, (the postmaster being still absent,) who informed him that the intimations referred to were true, and that the department was embarrassed by debts growing out of the number of extra allowances for improvements, &c., &c., which had been authorized by the Postmaster General, and which exceeded the accruing revenue of the department. Deponent at once suggested to Colonel Gardiner the propriety of forthwith reducing these improvements and extra allowances, so far as to relieve the department of its embarrassments, and bring its expenditures within its means. Colonel Gardiner expressing his doubts whether this could be legally done in the absence of the Postmaster General, deponent directed the nephew of Major Barry to write, and inform him that his immediate presence at Washington was required by deponent. This letter was written and sent by mail that evening, but, Major Barry having extended his journey to Tennessee, it did not reach him as soon as was expected, nor did he, of course, reach Washington as soon as was desirable under the existing circumstances. When he did arrive deponent had an interview with him, and repeated the suggestion, that it would be proper for him at once to reduce the improvements and extra allowances authorized by the department, until it was relieved *by* pecuniary embarrassment.—Finding, soon after, that no steps were taken to carry this suggestion into effect, deponent gave a written order on the subject, preventing all further delay. But deponent, at this time perceiving that Major Barry's health was sinking, and could not endure the labors of office, which were greatly increased by the numerous calls of Congress through their committees, found it necessary to relieve him of his duties; and a sea voyage being suggested, as the best means of preserving his valuable life, deponent proposed to send him minister to Spain. Major Barry accepted the proposition with kindness, but agreed to remain in the office until deponent could find a fit and competent individual to fill it. Deponent at once turned his thoughts to Amos Kendall, (the defendant,) who had displayed eminent talents under the able heads of the Navy Department, and had done much in clearing that branch of the public

service of all its existing impurities, and restoring it to order and system. The proposition was made to him to accept of the Post Office Department, and he was made acquainted with the arrangement which had been made with Major Barry.

Mr. Kendall (the defendant) stated that he did not desire the office; he said his health was not good; that the situation of the Post Office Department was such as to require great labor in restoring it to order; and he well knew, from past experience, that the retrenchment which was necessary to bring its expenditures within its means, could not be effected without exposing the agent to censure and abuse; that the office he then held was the height of his ambition; that it was reduced to a system, and that his labors in it were light, compared to those which were required in the Post Office Department. Deponent requested him to think of the subject more maturely, and after an earnest expression of the hope that he would yield, in this instance, to his wishes, asked him to call upon him the next day. At the next interview, deponent again urged upon Mr. Kendall the acceptance of this office, and endeavored to meet his objections, by assurances that he overrated the difficulties of the office, and that his talents and energy would be as successful there as they had been in the 4th Auditor's office. Finally, at deponent's request, but with great reluctance, he agreed to accept the office; when Major Barry was appointed minister to Spain, and the vacancy thus occasioned was filled by Mr. Kendall, the defendant.

Deponent adds, that the offer of this appointment to Mr. Kendall was spontaneous on his part, and without any inducement from any quarter.

To the 3d interrogatory deponent answereth, that defendant did consult with him in relation to the principles on which the department should be administered, and the course of action necessary to extricate the department from its embarrassments.

In the latter respect, this was to suspend all extra improvements, where the Postmaster General had the legal right to do so, and all mail routes which did not yield to the department the amount required by law, rendering to all parties justice and full remuneration for any services really performed, until the expenses of the department were brought within its means. And this deponent further says, that as far as the official acts of the defendant came to his knowledge, he acted with the greatest impartiality in all cases.

Deponent believes that the defendant was incapable of being acted upon improperly, either by friendship, on the one side, or enmity on the other; and that he was too honest to allow politics to interfere with the strict rules of justice in his decisions.

Judging the tree by its fruit, deponent can safely say, that he never knew any public officer who exhibited the qualities of integrity, independence, and impartiality, in a higher degree than the defendant.

As to the personal feelings entertained by defendant for plaintiffs, deponent had every reason to believe that they corresponded

with his own, and were those of friendship. Defendant believed that they were enterprising and valuable agents; but he had a duty to perform to the Government as well as to them, and he was bound to reject all accidents that were not based *upon* right and justice.

To the 4th interrogatory deponent answereth, that, shortly after defendant entered upon the duties of his office, he reported to him, as President of the United States, that his predecessor had made a number of extra allowances to mail contractors before he left the department, including heavy allowances to Messrs. Stockton & Stokes. When his report was made, it greatly astonished deponent; because he had directed Major Barry, a short time before, and in writing, to suspend all extra allowances when he had the legal authority to do so, until he reduced the expenditures of the department within its active means. It was the suspension of these extras that occasioned the difficulty between the plaintiffs, Messrs. Stockton & Stokes, and defendant, which became afterwards the subject of legislation by Congress; and, in reference to which, the act of Congress recited in the 4th interrogatory was passed and approved by me as President of the United States.

In answer to the 5th interrogatory deponent saith, that, at the time he approved the act of Congress, he believed it included only those accounts which had been suspended by defendant Kendall, and had been allowed by his predecessor. Deponent begs leave to date his reasons for this opinion. Messrs. Stockton & Stokes had presented to deponent a memorial stating the injustice done to them by the defendant in suspending these accounts, and that, if they were not paid, the consequences would be ruinous to them. Deponent referred their memorial to Mr. Kendall, calling on him for his written report with the evidence in the case, determined, if the claim was as evident and just as it had been represented by them, to have it adjusted and paid. Mr. Kendall made his report, accompanied with the testimony; upon which, after due consideration and full examination, deponent thought he could not, in justice to the United States, order the accounts to be paid; and recommended the plaintiffs to apply to Congress as the only competent power to direct the payment of the accounts. The plaintiffs did apply to Congress, and the before recited act was passed for their relief.

Admitted by the court.

To the 6th interrogatory deponent answereth, that it is answered in his reply to the 3d interrogatory; but he now repeats, that the defendant did consult with him about the propriety of making the suspension before referred to, alleging some delicacy in the matter as it regarded his predecessor, Major Barry; but at the same observing, that duty to the Government and justice required that payment should be withheld. Deponent replied, in substance, do your duty to your country, regardless

of delicacy to your friend, and suspend these as well as all other accounts of a like kind; and he suspended them with deponent's approval.

To the 7th interrogatory he answereth, that, after the award was made by Virgil Maxcy, Solicitor of the Treasury, to whom the act of Congress referred it, the defendant paid to the plaintiffs the whole amount of the suspended debt, agreeable to said award; but refused to pay the other accounts taken into the award by Mr. Maxcy, alleging, as this deponent understood, that Mr. Maxcy had transcended his powers by taking into view and deciding upon other accounts not submitted by the act of Congress. The plaintiffs made known to deponent the refusal of defendant to pay the balance of Mr. Maxcy's award, and urged deponent to give an order to him to comply fully with said award. On their solicitation a report in writing, with all the facts of the case, was required from defendant, and was promptly made; from all which it did appear to deponent that Mr. Maxcy had gone beyond the submission in taking into consideration those other accounts besides those suspended, which were alone in controversy between the Postmaster General and the complainants, as I understood. And this deponent referred the defendant's report to Mr. Maxcy for his written reply. Mr. Maxcy replied very fully and in writing, and Mr. Kendall rejoined. After a full consideration of all the arguments in the case, deponent refused to give any order to the Postmaster General to pay the balance of the award. The suspended accounts having been paid, deponent deemed the balance of the award as extra-judicial, not coming within the submission.

Deponent further sayeth, that he well remembers that after the refusal to pay that part of the award which was considered beyond the terms of submission, the plaintiffs, by themselves or agents, applied, as deponent believes, by memorial to the United States Senate, which was referred to its committee, who reported that the Postmaster General, now defendant, was authorized, and ought, to pay the full amount awarded. This deponent, seeing this report, sent for Mr. Grundy, one of the committee, and suggested to him that the resolution of the Senate alone could not justify the Postmaster General in paying what he believed was an illegal and unjust account, and urged on Mr. G. the propriety of making the resolution a joint one with that of the Representative branch of Congress, assuring him that the Postmaster General only wanted a legal authority which would shield him, in paying the same, from censure and attacks from the House—some of whose members had displayed much animosity towards him. That deponent knew that Mr. Kendall had friendly feelings towards Stockton & Stokes, and if Congress gave the authority, he would most cheerfully pay the same. These suggestions were not embraced, but the Senate took and adopted the report of the committee, and there the matter rested until deponent's official term expired.

To the 8th interrogatory deponent answers by referring to his answer to the 7th.

To the 9th interrogatory deponent says, he did not believe that the resolution of the Senate did or could alter the official duties of the department; and it was this belief which induced deponent to have the interview already set forth, with Mr. Grundy, assuring him that by the action of Congress alone could this vexed question be put to rest.

To the 10th interrogatory deponent answers, that he had many interviews with defendant, and that in all his public and private conversations he seemed to be personally friendly to the plaintiffs, and sincerely regretted, as well on their account, as his regard for Major Barry, that he could not, consistently with the duties of his office and justice to the United States, pay these accounts. Deponent again here repeats his conviction, founded on a long acquaintance with the character of defendant, that he was incapable of being swerved from the performance of duty by any personal feeling, and that the scales of justice in his hands were never influenced by sordid or unworthy considerations.

To the 11th and last interrogatory deponent answers, that in suspending the accounts of the plaintiffs, defendant could have no motive but that of sheer justice to the Government, as much of the testimony, agreeably to deponent's recollection, went to show that the extra services for which the extra allowances were made and suspended by [the] department were never performed by the contractors. Judging, also, from the friendly feeling for the plaintiffs, after expressed to deponent by the defendant in the course of their official intercourse, deponent has no hesitation in saying that the idea that malice or personal ill will had anything to do with the disposition made of their accounts or claims, is totally unfounded and gratuitous.

Not being further interrogated, deponent sayeth not.

ANDREW JACKSON.

Circuit court of the District of Columbia for the county of Washington.

LUCIUS W. STOCKTON, WILLIAM B. STOKES, and DANIEL MOORE, surviving partners of RICHARD C. STOCKTON, deceased, and the said surviving partners,
vs.
AMOS KENDALL.
} Case.

STATE OF TENNESSEE,
County of Davidson, to wit:

I, Morgan W. Brown, judge of the courts of the United States for the district of Tennessee, not being of counsel or attorney to either of the parties to the above named cause, or interested in the event of the said cause, do hereby certify that the aforegoing deposition of Andrew Jackson was taken before me at the county aforesaid, on this 6th day of November, in the year of our Lord one thousand

eight hundred and forty-one; that after the said deposition or testimony aforegoing was reduced to writing as aforesaid, the said deponent did subscribe his name thereto—the said deponent having been by me carefully examined, and cautioned and sworn to testify the whole truth relative to the above named cause or matter in controversy; that the said deposition was taken at the instance and request of the defendant in the above named cause, and for the reason that the said defendant lives at a greater distance than one hundred miles from the city and county of Washington, in the District of Columbia, the place of trial of the said cause, and that neither the plaintiffs or their attorney was within one hundred miles of this place, and neither of them was therefore notified by me of the taking of the aforesaid deposition, or present at the taking thereof.

And I do further certify, that the said deposition is by me sealed up, and directed to the circuit court of the District of Columbia for the county of Washington, at Washington city.

Given under my hand and seal this 6th November, 1841.

MORGAN W. BROWN. [SEAL.]

Deposition of Martin Van Buren, referred to in defendant's 2d bill of exceptions, page 48.

CIRCUIT COURT FOR THE DISTRICT OF COLUMBIA,
County of Washington.

LUCIUS W. STOCKTON, WILLIAM B. STOKES, and DANIEL MOORE, surviving partners of RICHARD C. STOCKTON, and LUCIUS W. STOCKTON, WM. B. STOKES, and DANIEL MOORE,
vs.
AMOS KENDALL.
} Case.

Deposition of Martin Van Buren, late President of the United States.

Questions by defendant.

1. Was or was not an application made to you, soon after your inauguration as President of the United States in March, 1837, by the plaintiffs in this case, or some person or persons in their behalf, to cause the balance of the award of the Solicitor of the Treasury, withheld by the defendant, to be paid to them; and what was your decision?

2. Had not the Senate of the United States, prior to that application, passed a separate resolution, declaring that defendant was authorized to pay the money withheld, and ought to pay them? If so, what was your view of the legal effect of this resolution upon the defendant? Please state, if you remember, what he stated to you he considered the effect of that resolution upon himself, as an officer of another branch of the Government.

3. When the mandamus suit was commenced against defendant, was it not considered by you and your cabinet as involving the

constitutional independence of the executive branch of the Government; and, after consultation, was not the defence, in that view of the case, turned over to the Attorney General in conjunction with the district attorney?

4. Did not you, the Attorney General, and every member of the cabinet, concur with the defendant in the opinion that the circuit court for the District of Columbia had no legal authority to hold the head of an executive office at Washington responsible, by an action of mandamus; and that this attempt ought to be resisted on that ground?

5. Please to state whether, on the occasions above referred to, or any others, you heard or saw, in the language or conduct of the defendant, confidential or otherwise, any thing showing or tending to show that, in *within* this money, he was actuated by a malicious design to injure or destroy the defendants, or any of them. Please state all circumstances within your recollection, tending to show what his real motive was.

6. Please state any thing else within your knowledge and recollection, which may go to explain the conduct of the plaintiff in this case.

CIRCUIT COURT OF THE DISTRICT OF COLUMBIA,
For the county of Washington:

WILLIAM B. STOKES and others, survivors of R. C. STOCKTON,
vs.
AMOS KENDALL.

The depositions and answers of Martin Van Buren, ex-President of the United States, to the annexed interrogatories:

To the first and second interrogatories I reply, that an application of the character referred to in in *them was made to me at the time stated, and that the papers, which are also hereto annexed, numbered from one to five, and upon which I have severally written my name, are true copies of original communications in my possession; showing, first, the nature of the original application to me; secondly, the report of the defendant Amos Kendall, upon a reference thereof to him by me; thirdly, my division upon the application and the rumors therefor; fourthly, a second* a second *application from the same parties; and fifthly, my reply thereto. From an obscure memorandum on the last paper, I think it possible that the necessity of sending it was by personal intercourse with one of the plaintiffs, or in some other way, suspended; but my impression* [*is*] *that a copy was forwarded according to its directions. The exhibits of B, C, D, and E, referred to in Mr. Kendall's report to me, are not found in my possession.*

To the third and fourth interrogatories, I reply in the affirmative. There may have been one or more members of the cabinet whose opinions upon the subject embraced in their interrogatories were

either not actually given, or were different from those which were entertained by myself and the major part, if not the whole, of the cabinet; but I have no recollection of any such circumstance.

Admitted—(*To the fifth interrogatory I state, that I did not, on the occasions referred to, or on any other, see or hear any thing in the language or conduct of the defendant, confidential or otherwise, showing or tending to show that, in withholding this money, he was actuated by a malicious design to injure or destroy the plaintiffs or any of them, but much of* of *a contrary character.*) Not admitted—(*I remember well that, in the first conversation I had upon the subject with the defendant, he stated, in substance, that, although he regarded the claim of the plaintiffs as of too unjust a character to be able to pay it himself, unless directed to do so by a superior authority, (I do not distinctly remember whether it was the authority of Congress or the Executive to whom he referred,) he would* nevertheless not complain, if that was done under the advice or direction of the President, by the acting Postmaster General, during the absence of the defendant.) Believing it, under the circumstances, most proper that whatever was done in the matter should be done by the defendant himself, I informed him; and that view of the subject was not again adverted to.

At a subsequent period, the plaintiffs, or some of them, were again referred to by the defendant, in connexion with service of the department, in a manner which struck me at the time as strongly illustrative of the absence of personal ill will, on the part of the defendant, towards them, notwithstanding the excitement which their claim and his refusing to pay it had produced. I cannot take upon myself to speak with certainty what the particular occasion was to which I now refer; but believe it was in respect to carrying the mails without the assistance of the railroad company, in consequence of the extravagance of the prices asked by them for carrying it. I do not know that I can say any thing material in reply to the last interrogatory. I have an impression, but it is an indistinct and unsatisfactory one, that the opinion that I have expressed, in respect to the defendant's motives in this matter, strengthened by a conversation I had with the late Felix Grundy, in which he expressed an opinion upon that point favorable to the defendant, and different from what I supposed him to entertain. I cannot, upon this latter point, speak with any thing like certainty, and only advert to it because the subject has been brought to my notice by the defendant, who informed me that Mr. Grundy's declaration to that effect *were* communicated to him by me.

M. VAN BUREN.

Subscribed and sworn to before me, the 23d day of November, 1841.

M. BUTLER,
One of the judges of Columbia county courts.

(Copy.)

To his excellency the PRESIDENT OF THE UNITED STATES.

SIR: The undersigned beg leave to make the following representations to the President, and to pray that he will order a strict and literal execution of the law in our behalf. By an act of Congress, approved 2d July, 1836, our claims as contractors for carrying the mail of the United States were referred, for examination and final decision, to the Solicitor of the Treasury. That by his award the sum of one hundred and sixty-one thousand five hundred and sixty-three dollars and eighty-nine cents ($161,563 89) were declared to be due and owing to us. That of the above sum one hundred and twenty thousand nine hundred and thirty-eight dollars and thirty cents ($120,938 30) have been partly paid and partly credited, leaving unpaid to us the sum of forty thousand six hundred and twenty-five dollars and fifty-nine cents; which sum the Post Master General has refused, and still does refuse to pay, contrary, as we consider, to the true intent and obvious construction of the said act. That, at the recommendation of the Postmaster General, we submitted the difficulties suggested by him to the Congress of the United States, praying for such legislative interference as they in their wisdom might deem proper. This submission to Congress was approved of by the President of the United States in writing. (See exhibit A.) The memorial of the undersigned was referred by the Senate to the Committee on the Judiciary; and, on the 20th January, 1837, the report hereto annexed was made. (See exhibit B.) Before any action of the Senate was asked for on said report, a long and labored exposition was made by the P. M. General to the President of the United States; which, having been referred by the President to the solicitor, drew from the solicitor a reply to said exposition; which was communicated upon by the Postmaster General. That the whole of said papers were sent to the Senate by the President, and referred to said committee. Whereupon the undersigned, considering the action of the Senate declaring the award of the solicitor under said act as conclusive, and thereby refusing further legislation, addressed a letter to the Postmaster General, (see exhibit D,) and received from him his answer thereto, dated 27th February, on the 2d day of March, at Baltimore—said letter having been sent to Gadsby's hotel, and from thence forwarded to us. (See exhibit E.)

From the above answer, it is manifest that the Postmaster General does not intend to comply with the injunctions of said act, but considers the solemn decision of the Senate of the United States as nugatory and inoperative. The undersigned, finding themselves thus placed between the decision of the Senate and the opinion of the Postmaster General, have no alternative left but to solicit, most earnestly and respectfully, that the President will direct that the act aforesaid be strictly complied with by the immediate payment

of the balance of said award; the withholding of which has subjected them to great sacrifices, under which they are still severely suffering. If the President should desire to see the divers papers referred to the Senate, it is presumed he can obtain them by application to the secretary.

(Signed) RICHD. C. STOCKTON,
WM. B. STOKES,
LUCIUS W. STOCKTON,
DANIEL MOORE,
Pr. L. W. STOCKTON.

March 6th, 1837.

(Copy.)

POST OFFICE DEPARTMENT,
March 7th, 1837.

To the PRESIDENT:

SIR: I have just received the memorial of R. C. Stockton, W. B. Stokes, Lucius W. Stockton, and Daniel Moore, with the accompanying documents by you referred to me, and have given them a careful perusal. The documents submitted by them will enable you clearly to understand the principles involved in the case presented. You will perceive that, in December last, a similar memorial was presented to the President, who referred the claimants to Congress for a solution of the difficulty, if they thought proper, by further legislation. No legislation has taken place. And you will perceive, by my letter to the President, dated 27th December last, (exhibit A,) and my letter to the claimants, dated 27th February last, (see exhibit E,) how impossible it is for me, consistently with my opinion of law and of justice, to pay the balance claimed by them unless *required* to do so by an act of Congress. It seems proper to add that, subsequent to the adoption of the resolution by the Senate, a friend of the claimants sent it to the President, acting, as I presume, at their instance, and representing that he ought to cause the money to be paid. He sent for me, and, on my presenting him with my views of the case, and the position in which I was placed, he declined further interference, unless there should be some action by both houses of Congress. Under these circumstances this renewed application has excited some surprise.

Very respectfully, your obedient servant,
(Signed) AMOS KENDALL.

(Copy.)

WASHINGTON, *March* 28, 1837.

GENTLEMEN: I have examined and considered the memorial addressed to me by you, in which you request me to direct the immediate payment of the balance remaining unpaid of the amount awarded to you by the Solicitor of the Treasury, under the act of

the 2d of July, 1836. It appears from your memorial, and from the accompanying documents, that, after the refusal of the Postmaster General to pay the balance in question had been made known to you, a memorial was presented by you to the late President of the United States, requesting him to order payment to be made; that, after full investigation, he came to the conclusion that it was right and proper to refer the matter to Congress for their decision; that this course was acquiesced in by you, and the whole subject submitted to Congress by your memorial addressed to that body praying for such legislative interference as they might deem proper; and that no action has been had on this memorial other than a separate resolution of the Senate expressing the opinion of that body in favor of your claim. As I cannot consider this resolution, notwithstanding my high respect for the source from which it has emanated, as a compliance with the decision of the late President assented to by you, I do not think it proper to comply with your request.

This was signed by me, and addressed to the applicants.

M. VAN BUREN.

(*Copy.*)

BALTIMORE, *April* 3*d*, 1837.

His excellency MARTIN VAN BUREN,
President of the United States.

SIR: The undersigned have the honor to acknowledge the receipt of the President's letter of the 28th of last month, announcing to us, that he did not think it proper to comply with our request, which asked the President to direct the Postmaster General to carry into effect the act of Congress of 2d July, 1836, by paying *at* the full amount of the award of the Solicitor of the Treasury. We consider ourselves particularly unfortunate in having imposed upon us, in the first instance, the decision of the President, (in December last,) that we should go to Congress for it; *it* amounted to a command to do what we thought unnecessary; and in the second place, to be condemned for doing what we were thus ordered to do. We most respectfully, but unhesitatingly, aver, that the honorable President has mistaken the point submitted to Congress, and thereby misconceived the intended operation of the Senate's resolution. The President comes to the conclusion, that the separate resolution of the Senate was merely an expression of the "opinion of that body in favor of our claim." That was, to be sure, the effect, but it was not their decision. The point submitted, as will be seen from the letter of Gen. Jackson, referred to by you, was the question of jurisdiction raised between the solicitor, backed by the Attorney General, and the Postmaster General. If the jurisdiction assumed were legal, the claim as settled could not be disturbed. The Committee of the Judiciary were *unanimous*, and so was the Senate, that no further

legislation was necessary. Why? Because they could not consent to pass two acts of Congress, to cause a ministerial officer to do his duty. Suppose, what in truth was the position of the parties before the Senate, that the President and Postmaster General, as memorialists, were asking the Senate and House of Representatives to say what they ought to do, and the resolution had said, "you ought to pay the money," would not that have been considered directory? Is it not the every day practice of the Senate and House both, *on separate resolutions*, to refer certain subjects to heads of departments to adjust finally, without further legislation. Suppose, for a moment, that your memorialists had not been satisfied with this resolution of the Senate, and had said to them, your resolution will have no effect, we must vary the proceedings in this case from all others, and carry the papers over to the other House, and have them to back you. Would not this have been considered by them as an insult, and especially in a case where, *apparently*, the Postmaster General merely desired a justification for his action? Suppose the Senate had dismissed our memorial without any action except a resolution declaring that the solicitor had exceeded his jurisdiction; would not that have been considered as conclusive by the President and Postmaster General, and directory not to pay the money? Surely it would. How then are we made to suffer, both by the affirmative and negative of the Senate, hacked thus by a two-edged sword, and without even a foil to defend ourselves. Allow us to repeat the position. We apply to the President to see that an act of Congress (*approved and signed by him*) is carried into effect, by paying money found due to us on award: an act purely ministerial. The President hesitates and "thinks it right and proper to refer it to Congress," stating the difficulty to be a question; we, in conformity with his reference, carry out the application; the Senate, considering further legislation unnecessary, pass a resolution, such as has been passed in many cases, clearly sustaining the question of jurisdiction, and their resolution is regarded as inoperative. Allow us barely to ask, would the honorable Senators, who carried that resolution through, and those who took the trouble to present it to the President, have done so, if they had considered that the action of the Senate was to be looked on as inoperative. In other words, the President hesitated on the point of *jurisdiction*. The solicitor and Attorney General had decided, and the Senate fully concurred in their opinion. What more was wanting to warrant the President in carrying into effect the act? We regret exceedingly, that our situation is such as to compel us again to bring this matter before the President; but if, upon further reflection, he should think that our prayer *as* in conformity with law and justice, we should rejoice at *knowing* an order to receive our well earned balance. Believing the views we have taken in this communication warranted by the deliberate act of Congress, we respectfully beg your excellency to reconsider your decision, as expressed in your letter of the 28th

ultimo. In making this request, we earnestly ask your attention to the act of 2d July, 1836, approved and signed by your predecessor, to the action of the Solicitor of the Treasury under that act, to the strong opinion of the Attorney General on the point of jurisdiction, and to the full confirmation of that action, and that opinion, by the report of [the] Judiciary Committee of the Senate of the 20th January, 1837, and the unanimous resolution of the Senate of February, 1837. We particularly and respectfully ask your attention to these references, under a full conviction that your excellency will not permit so clear a law to remain inoperative, to the serious injury, indeed, we may say, the certain ruin of individuals whose rights, though clearly defined, have been unwarrantably withheld from them. With the most respectful consideration for the highest executive office of the Government, we lay our views before you, under the full hope that we shall receive justice at your hands.

Your most obedient servants,

(Signed) STOCKTON & STOKES,
LUCIUS W. STOCKTON.

P. S.—As an additional apology for this letter, we think it due to ourselves to state to your excellency that we have been assured, by prominent and influential members of the Senate, that that body would no further legislate on the subject; and one recently writes us thus: "The case appeared very plain to the whole Senate; there was not a negative voice raised against the resolution reported by the committee. This very circumstance will create a difficulty in the passage of a joint resolution to explain a law in which the Senate does not believe there is any ambiguity." Thus our chance for a joint resolution seems hopeless.

Respectfully,

S. & S.,
L. W. S.

(*Copy.*)

WASHINGTON, *April* 15, 1837.

GENTLEMEN: I have carefully considered the suggestions contained in your letter of the 3d instant, but have not found in them cause to change the opinion I have heretofore expressed upon the subject.

And am, very respectfully, your obedient servant,

M. V. B.

Messrs. STOCKTON & STOKES, and LUCIUS W. STOCKTON.

WILLIAM B. STOKES and others
vs.
AMOS KENDALL. } Case.

Circuit court of the District of Columbia, for the county *for the county* of Washington.

STATE OF NEW YORK, *county of Columbia, to wit:*

I, Medad Butler, one of the judges of the court of common pleas of the said county of Columbia, in the State aforesaid, not being as

counsel or attorney for either of the parties to the above entitled cause, nor interested in any manner in the event of the said cause, do hereby certify, that the deposition of Martin Van Buren, hereto annexed, was taken before me, at Stuyvesant, in the county of Columbia, in the State of New York, on this twenty-third day of November, in the year of our Lord eighteen hundred and forty-one. That the said deposition was reduced to writing by me, in the presence of the said deponent, and was subscribed by him in my presence, he being by *by* me first carefully examined, and cautioned, and sworn to testify to the whole truth relative to the above entitled cause or matter in controversy. That the said deposition was taken at the instance of the defendant to the above named cause, and that the reason for taking the same is, that the said deponent lives at a greater distance than one hundred miles from the county of Washington, in the District of Columbia, the place of the trial of the said cause. That neither the plaintiffs, nor any of them, nor their attorney, is or are within one hundred miles of this place, and therefore they were not notified by me of the taking of the deposition hereto annexed, nor present at the taking of the same. And that the said deposition is by me sealed up and directed to the circuit court of the District of Columbia, for the county of Washington, at Washington city.

In testimony whereof, I have hereunto set my hand and seal, the day and year above written, in this behalf.

MEDAD BUTLER, [L. S.]
One of the judges of the Columbia county court.

UNITED STATES OF AMERICA:
By William H. Seward, Governor of the State of New York.

It is hereby certified, that Medad Butler, of the town of Stuyvesant, in the county of Columbia, in this State, was, on the 23d day of November, 1841, a judge of the county court of said county of Columbia, duly commissioned and sworn, and that full faith and credit are and ought to be given to his official acts.

In testimony whereof, I have caused the great seal of the
[L. S.] State to be hereunto affixed. Witness my hand, at the city of Albany, the twenty-fifty day of November, in the year of our Lord one thousand eight hundred and forty-one.

WILLIAM H. SEWARD.

Deposition of Benjamin F. Butler, referred to in defendant's 3d bill of exceptions, page 48.

Deposition of B. F. Butler.

UNITED STATES OF AMERICA,
Southern district of New York,
city and county, State of New York, ss:

Be it remembered, that on this second day of December, in the year of our Lord eighteen hundred and forty-one, I, George W.

Morton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed 1st March, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at my office, at the United States courts in the city of New York, in the said southern district of New York, in the State aforesaid, Benjamin F. Butler, to testify and the truth to say on the part and behalf of the defendant, in a certain suit or matter of controversy now pending and undetermined in the circuit court of the United States for the District of Columbia, for the county of Washington, at the city of Washington, in the said District, wherein William B. Stokes and others are plaintiffs, and Amos Kendall is defendant. And the said Benjamin F. Butler being about the age of forty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Benjamin F. Butler, and he did thereupon depose, testify, and say as follows, viz: That he held the office of Attorney General of the United States from the 15th November, 1833, to the 1st September, 1838; that in the month of October, 1836, deponent received a communication from Virgil Maxcy, esq., Solicitor of the Treasury, dated, as deponent believes, the 12th October, 1836, requesting deponent's opinion, as Attorney General, touching the extent of the solicitor's jurisdiction under the act of Congress of the 2d July, 1835, for the relief of Wm. B. Stokes and others. This communication is not now in deponent's possession, having been left by him among the papers of the Attorney General's office at Washington. At its date deponent was in the State of New York, and he did not return to the city of Washington until the 21st or 22d of October, 1836. Deponent believes that the solicitor's letter was sent to deponent in the State of New York, but he did not reply to it until after his return to the city of Washington, when he addressed an official letter to the solicitor, dated the 31st day of October, 1836, giving his opinion on the question stated by the solicitor, which letter, as deponent believes, is duly recorded in the said Attorney General's office at Washington. That soon after giving to the Solicitor of the Treasury the opinion above referred to, deponent learned from the defendant Amos Kendall, the Postmaster General of the United States, that deponent's opinion had been communicated to said Kendall by the solicitor; that he, the said Amos Kendall, thought it erroneous; that before the application of the solicitor therefor, he, the said Kendall, had formed a decided opinion that the solicitor had no authority, under the aforesaid act of Congress, to consider any claim except claims for services alleged to have been

performed before the suspension of pay by him, the said Kendall, and which had been presented before the act was passed; and that he had so informed the Solicitor of the Treasury before such application to deponent; and that a difference of opinion on this point and on other matters had occurred between him and the solicitor, which had led to discussions between them before such application to deponent; that at the same time, when the defendant gave to the deponent the information just stated, the said defendant expressed his regret that he had not been informed, at the time, of the solicitor's application to deponent for his opinion; that he, the defendant, had himself thought of asking deponent's official opinion on the subject of the extent of the solicitor's jurisdiction, but had been prevented from doing so by deponent's absence from the city of Washington. The defendant, Amos Kendall, at the same time complained to deponent of the manner of the solicitor's application to him, and said that the whole case, as it was spread before the solicitor, with the correspondence between the solicitor and himself, ought to have been laid before deponent, instead of presenting an abstract question, as had been done by the solicitor; and that opportunity should have been given to him, the said defendant Kendall, to submit his views on the subject to deponent before the giving of deponent's opinion. In reply, deponent informed the said Kendall that deponent had confined his reflections to the single question presented by the solicitor, the presenting of which, deponent thought, did not require the submission of the whole case; and that deponent was satisfied that his answer to that question was correct, though it was certainly possible, that if the whole case, with the reasonings and news of the defendant, had been laid before deponent, he might have come to a different conclusion. Deponent also expressed his entire ignorance of what had passed on the subject between the defendant and solicitor, and his regret that any misunderstanding had arisen between them.

At the time referred to, and at other times before the application to the circuit court of the United States for the county of Washington, by the plaintiffs in this cause, for a mandamus, the defendant stated to deponent that, in defendant's opinion, the solicitor had transcended his legal authority in several instances by making large allowances to the plaintiffs, which he had no legal authority to make, and that he had also allowed many illegal and extravagant claims, and in general that his award was very unjust to the United States.

Deponent further says, that after the passing of the resolution of the Senate of February, 1837, which declared that the Postmaster General was warranted in paying, and ought to pay, the full amount of the solicitor's award, and before the application for a mandamus, the defendant had one or more conversations with deponent on the subject of that resolution. In these conversations the said defendant always declared, that he considered the resolution

of the Senate as wholly destitute of any power to alter the law, or his duty under it; that it would afford him no legal protection for doing an act contrary to law; and that if the resolution was intended to compel him to do such an act, he thought it would be his duty, instead of complying with the resolution, to resist it; that he was ready to obey any law which Congress might pass in the matter; but that he could not reconcile it to his sense of duty to do, on the resolution of the Senate alone, an act which he conscientiously believed to be illegal; that deponent expressed to said Kendall, at the time of these conversations, deponent's concurrence in the views above mentioned, as to the inoperative character of the resolution of the Senate; that, after the passing of the resolution of the Senate, and just before President Jackson went out of office, an application was made to him, as deponent understood, in behalf of the solicitor's award, which application was denied by President Jackson, on the ground, as deponent understood, that the matter had been submitted to Congress for their decision, but had not been definitely acted on by *both* branches. After President Van Buren came into office, the like application, as deponent understood, was made to him, and was denied on the ground, as deponent understood, that his predecessor, or President Jackson, had received and decided upon the same application, and that it was inexpedient, under the circumstances, to review his decision; but as this deponent was not particularly consulted in relation to either of these applications, it is possible that other grounds, in addition to those above stated, may have entered into the disposition made of them.

This deponent further says, that in May, 1837, when the plaintiffs applied for a mandamus, as before mentioned, the defendant, as Postmaster General, called for deponent's opinion and advice, as Attorney General, as to the jurisdiction of the circuit court to issue such writ of mandamus. In reply, deponent sent him an official opinion, stating that, in deponent's judgment, no such jurisdiction was passed by the court. In June, 1837, and after the court have issued an alternative mandamus, deponent, in reply to another application of the defendant, gave a further and fuller opinion on the same subject, both which opinions are recorded in the Attorney General's office. Deponent did not appear in the circuit court as counsel in the cause; but Mr. Key, then District Attorney for the District of Columbia, who took charge of the case for the defendant, consulted deponent officially on the subject, and the defence interposed by him was with deponent's concurrence and advice. While these proceedings were pending in the circuit court, the subject was spoken of, and, as deponent believes, more than once, at meetings of the President's cabinet, though deponent does not recollect that it was ever made the subject of a final cabinet discussion. The issuing of the mandamus was spoken of, on the occasions now referred to, by this deponent and the defendant, as

an attempt, in their judgment, to direct by mandamus, an executive officer in the discharge of an official act, and, therefore, as affecting the constitutional independence of the executive department. Other members of the cabinet, and President Van Buren also, according to the deponent's best *resolution*, expressed the like impressions; and in this view of the case, it was deemed expedient by all, that the question should be deliberately discussed in the circuit court. After the decision of that court, awarding a peremptory mandamus, it was also deemed expedient by the President, and such of the cabinet as expressed their opinions on the subject, that a writ of error should be brought, for the purpose of reviewing that decision. Deponent, as Attorney General, advised and assisted in the prosecution of that writ of error, and took part in the argument of the cause in the Supreme Court, with the knowledge of the President. The defendant left the conduct of his defence in the circuit court, and of the writ of error in the Supreme Court, to Mr. Key and deponent, as matters falling within their appropriate official duties; and, in that view of the subject, this deponent, as Attorney General, assisted and took part therein as above mentioned.

This deponent further says, that he was an associate with the defendant, first in the cabinet of President Jackson, and afterwards in that of President Van Buren, from the time of defendant's appointment as Postmaster General, until some time after the decision of the Supreme Court on the writ of error before mentioned; that deponent conversed with said defendant often and freely, and sometimes confidentially, during every stage of the controversy between the plaintiffs and said defendant as Postmaster General; that deponent never discovered in him, in word or deed, any thing indicating a disposition to withhold from the plaintiffs any portion of the moneys claimed by them, for the malicious purpose of destroying, injuring, or embarrassing them, or either of them; on the contrary, the defendant appeared to act from a most sincere and deeply settled conviction, that the claims of the plaintiffs originally suspended by him were illegal; that the additions made thereto by the Solicitor of the Treasury in his award, were illegal, and not warranted by justice or equity; that, in this respect, and in others, the solicitor's award was very erroneous and improper; that the interference of the court by mandamus was unauthorized and illegal; and that it was his duty, as a faithful officer of the Government, not to execute the award, or comply with that mandamus, until he had first taken every legal and constitutional measure to determine their validity, and to protect the interests of the United States in the premises.

B. F. BUTLER.

Read to and subscribed by the witness, Benjamin F. Butler, on his examination before me, the 2d day of December, 1841.

GEO. W. MORTON, *U. S. Com.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, George W. Morton, a commissioner, duly appointed by the circuit court of the United States, for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the witness, Benjamin F. Butler, lives and resides in the city of New York, more than one hundred miles from Washington city, District of Columbia, the place of trial. I further certify, that no notification of the time and place of taking the said deposition, signed by me, was made out and served on the plaintiffs or their attorney or agent, to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit, because neither the said plaintiffs, their attorney or agent, are within one hundred miles of the city of New York, the place of caption or taking of said deposition. I further certify, that on the second day of December, A. D. 1841, I was attended by defendant's counsel, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the whole truth, and the deposition was by me reduced to writing in the presence of the witness. And from his statements, and after carefully reading the same to the witness, he subscribed the name in my presence. I have retained the said deposition in my possession, for the purpose of sealing up, directing, and in the post office of the city of New York, the same with my own hand, for the court for which the same was taken. And I do further certify, that I am not *nor* attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal, this second day of December, in the year of our Lord one thousand eight hundred and forty-one, and of the independence of the United States the sixty-sixth.

GEO. W. MORTON, [SEAL.]
United States Commissioner, Circuit Court of the United States for the southern district of New York, in the second circuit.

UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, James W. Metcalf, clerk of the circuit court of the United States of America, for the southern district of New York, second

circuit, do hereby certify that I am well acquainted with the handwriting of George W. Morton, whose name is subscribed to the annexed certificate and deposition, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, a commissioner duly appointed by the said circuit court of the United States of America, for the southern district of New York, under and by virtue of the acts of Congress set forth *is* said certificate.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said circuit court, this second [L. S.] day of November, in the year of our Lord one thousand eight hundred and forty-one, and of the independence of these United States the sixty-sixth.

J. W. METCALF, *Clk.*

Copy of a letter from [the] Postmaster General of the United States to the Attorney General of the United States, marked (*a* 1,) and referred to in defendant's 2d bill of exceptions.

POST OFFICE DEPARTMENT, 30*th June*, 1835.

Hon. BENJ'N FRANKLIN BUTLER,
Attorney General of the United States.

SIR: In discharging the duties of Postmaster General of the United States, I find it expedient to ask your opinion upon certain questions of law which involve much private interest, and may become topics of high public concern.

On taking charge of this department, I found it involved in debt beyond its ability, in any short time, to make payment. Much of this debt was due to contractors on interior routes, individually of no great importance, but in the aggregate covering large portions of the Union, many of whom had been without pay for several quarters, and some for one or two years. By the records it appeared that allowances to a considerable amount had recently been made to a few of the principal contractors, in addition to their regular pay, the payment of which, it seemed to me, might be postponed with more propriety, and probably with less inconvenience, than the regular compensation of so many small contractors. Without examining into or considering the merits of these allowances, or the propriety of finally withholding payment, and under the hope that some step might be taken by Congress early in their next session, towards an equitable adjustment of all similar claims, I suspended them from the credit of the contractors. The heaviest of these suspensions is in the account of Messrs. Stockton & Stokes, and L. C. Stockton, on the routes from Washington to Philadelphia, and from Washington and Baltimore to Wheeling, amounting in all to $123,111 46.

Those gentlemen soon afterwards presented me with a memorial, herewith transmitted, marked A, in which they maintain that the

greatest of these allowances—being that on the Washington, Baltimore, and Wheeling routes—was definitively made in June, 1833, and has constituted a portion of their regular pay ever since; and they inform me that its suspension, by depriving them of all receipts from the department during the present year, will be attended with their certain ruin, and render it impossible for them to continue the transportation of the mails.

Considering it incumbent on me to avert so great a calamity to them, and such serious inconvenience to the department and the country, if it could be done compatibly with my public duty, I consented, contrary to my first intentions, to examine into the merits of these claims, at least so far as to determine whether there might not be a partial relaxation of the suspensions. The result of that examinatiou was, a firm conviction that the allowance itself was based upon misinformation as to facts and an erroneous view of the law, and that it ought not to be consummated. This conclusion was verbally communicated to Mr. L. W. Stockton, who thereupon withdrew their memorial. It is now again returned to me with an argument of F. S. Key, esq., contesting the position occupied by me; and with a verbal request that I will submit the law points involved to the opinion of the Attorney General. Although my mind is too clear in its convictions to admit of a douht, and I have no hesitation as to the path which my official duty requires me to pursue, yet, as the case is one of great responsibility, and as the claimants earnestly desire it, I have consented to submit it for your opinion, which I shall consider a safe guide for myself, whatever it may be, and which cannot but be useful to the claimants, either in relieving them from their embarrassments, or reconciling them to the course which I have felt it my duty to pursue.

I deem it unnecessary to enter into a minute examination of Mr. Key's argument. By the following narrative, you will perceive that he was not in possession of many material facts appertaining to the case, and consequently was without the light necessary to lead him to accurate conclusions. In this statement I shall confine myself, as Mr. Key has done, principally to the contested items and the Wheeling routes, amounting to the sum of $84,278. An epitome of the allowances on that route, under the existing contract, will enable you to understand more clearly the facts which will afterwards be developed. In the advertisement for mail contracts in 1831, offers were invited for carrying a daily mail from Baltimore and Washington to Wheeling, in three days and four hours.

Messrs. James Reeside, Richard C. Stockton, and L. W. Stockton, put in a proposal to carry this mail, and also the mails on the route from Frederick, Md., to Winchester, Va., and Washington, Pa., to Steubenville, Ohio, for the annual compensation of -	$7,000
Deduct for Winchester route - - $1,650	
" for Steubenville route - - 800	
	2,450
And it appears that their offer was to convey a daily mail from Baltimore and Washington to Wheeling, in three days and four hours, for the annual pay of	4,550
Their offer, however, contained a proposition for an improvement, thus: to run through in two and [a] half days, and run also a tri-weekly line to carry the way mails. This was agreed to, and the service directed from the beginning of the contract, at an additional compensation of - - -	8,950
Making their annual pay - - -	$13,500
No. 1. Directions were thus given to increase the speed, so as to run through in two days, at an increased compensation also, from the commencement of the contract service, of - - - -	6,750
Making their annual compensation, when they entered the service - - - - - -	$20,250
They were afterwards authorized to transport the mail from Baltimore to Frederick upon the railroad, and an allowance, taking effect 1st February, 1832, was made therefor, at the rate per year of - -	2,046
During the year 1832, the contractors charged, and were paid, according to the foregoing rates. In the winter of 1832–'3, it was alleged by them, that in consequence of the increased weight of the mail, and the badness of the roads, they had been obliged, to enable them to get through in time, to employ 44 extra horses, and 22 postillions, in ascending the mountains with the requisite speed, for which they claimed and were allowed, from 1st January, 1832, the annual sum of - - - - -	$9,812
At or about the same time, they claimed and were allowed, for a second daily mail, (the allowance to take effect from the 1st January, 1832,) the further annual sum of - - - - -	6,400
Making the annual pay of contractors - -	$38,508

At the end of the first quarter of 1833, the contractors for the first time charged for extra horses and postillions, and for the second daily line, introducing an item of $16,212 for the same services during the year 1832, which was passed to their credit. When the extra horses and postillions were first put on, or the second daily mail commenced running, there is no evidence to show; but as all the circumstances urged in support of these claims, such as the increase in the weight of the mails, and the repairs of the Cumberland road, occurred during the progress of the year 1832, it is evident that they could not have been put upon the road at the commencement of the year; and it now appears, that no second daily mail was carried by them, at least along the whole route, prior to the 24th April, or after the 1st September, 1832. The annual compensation to which the contractors considered themselves entitled, at the close of the first quarter of 1833, was, as has already been exhibited - - -	$38,508
The leading item now in controversy, is an allowance of 50 per cent. on that sum, to take effect from 1st January, 1832; making an annual amount of -	19,254
Thus their annual compensation was increased to - on routes covered by their original offer of $4,550.	$57,762

It will be recollected, that the quarter in which the second daily mail was first charged for and allowed, together with arrearages for the same service during the preceding year, ended on the 31st March, 1833.

On the 27th of the same month, Richard C. Stockton, being then at Washington, wrote a letter to the Postmaster General, stating, that in consequence of the increased speed on the Cumberland road, the great eastern mails, which, until the preceding fall, had gone by the other routes, had been thrown upon their route, and had so increased the weight and bulk of their mails as to render it impossible to carry it with the rapidity required, without making special extra provision therefor. He then proceeded to say:

"We therefore pray the Postmaster General will make us an allowance bearing a small proportion to the sacrifice which we are compelled to make. If we can have added but 25 per cent. to our present compensation on the route, we will instantly prepare for any emergency, either by running double lines, or increasing our stock, or by running separate vehicles, as occasion may require, or public accommodation demand. This compensation will but par-

tially remunerate us for the necessary increase of expense, and we trust the department will conceive it but reasonable to grant it from 1st January last."

The Postmaster General wrote thus, at the foot of this letter, viz:

"Major H., let the services be required. The question as to compensation, and the amount of it, reserved for future consideration."

Major Hobbie, under date of 28th March, 1833, communicated to the contractors the decision of the Postmaster General, and said:

"He requires that a full daily line of four-horse post coaches be substituted for the tri-weekly line of post coaches which you are now running on that route; that is, you run two full lines, the fast and the ordinary one," &c. "The question as to compensation, and the amount of it, is reserved for future consideration."

Accordingly, a second daily line was afterwards run by them on the route.

Major Hobbie was not at that time familiar with the prior action upon this contract, having entered on his present duties within that month; but finding, by investigations made subsequent to June, 1833, and before any order on the subject was known to him, that a second daily mail had already been provided for, he made the following memorandum, in pencil, upon Mr. Stockton's letter, viz:

"This is already paid for in the allowance of $6,400 from 1st June, 1832.—See contract and endorsement."

On the 2d June, 1833, R. C. Stockton, esquire, being then in Washington, addressed another letter to the department, adverting to the former letter, with the order taken thereupon, and adding:

"We find since then that the increased weight of the mails so far exceeds what was supposed at the time, that less than an allowance of 50 per cent. on our regular mail pay for these routes would be altogether insufficient to sustain us in the additional expenditure. We therefore pray you to take the matter into consideration, and to make to us the allowance of 50 per cent."

"I beg leave to refer you to the evidences accompanying this application, one of which will show you that the increased weight of the mails from Baltimore alone, westward, is considered to be at least 925 lbs. since the 1st January, 1832."

In a postscript it is added:

"I should have said, that prior to the year 1832 the mail from Baltimore, westward, did not exceed an average of 75 lbs. Now it amounts to at least 1,000 lbs., as will appear by the evidence accompanying this, besides the immense weight from Washington, which meets the Baltimore mail at Frederick."

"You will be pleased to attach this letter to my application of 27th March. I now leave the matter entirely to your own sense of justice, and will feel favored by an early decision."

At the same time Mr. Stockton alleged that his letter of 27th March, 1833, which asked an allowance of 25 per cent. "*from 1st January* last," was intended to have reference to the 1st January,

1832, and at some subsequent time the figures 1832, embraced in a parenthesis, were inserted in the letter after the word "*last*;" but when, or by whom, I am not informed.

It is now maintained by the claimants, that my predecessor in office did at that time definitively allow this claim of 50 per cent. to take effect from the 1st January, 1832, and authorize its payment, and that it has constituted a portion of their regular receipts ever since. In support of this position, the following facts and allegations are advanced as evidence, viz:

1st. An epitome of the case was made out upon an envelope of the papers in the following words, viz:

"Stockton and Stokes state, that the great increase of mails, occasioned, as it appears, from the sending of the great western mail from the northern and eastern States *via* Baltimore, in consequence of the greater expedition given to this route, renders it impossible for them to give the increased service required at less than 50 per cent. on their present compensation from 1st January, 1832."

"The certificates show that the weight is increased in more than a tenfold ratio. They submit it to the Postmaster General's sense of justice."

Across this endorsement the Postmaster General wrote, without date or signature, but supposed and admitted to have been done in June, 1833, the following words, viz:

"The claim for additional compensation as stated is just, and allowed."

2d. The allegation on the part of the claimants, that this allowance of 50 per cent. has been regularly charged by them ever since, and as regularly received as any portion of their compensation.

In explanation, and in opposition to these facts and allegations, are the following evidences, viz:

1. By the usual course of business in the Post Office Department, claims for additional compensation are first referred to the assistant in whose division they originate, for a report; and after action by the Postmaster General, the papers are returned to his files, which should exhibit the evidence of the Postmaster General's final decision on the subject, and after being so returned the decision is entered upon the contract.

It appears that when Mr. Stockton's letter of 2d June, 1833, was received, Major Hobbie, to whose division it belonged, was absent, and the Postmaster General himself was about to leave the city for the west. The latter wrote upon Mr. Stockton's letter of June 2d, the word "*suspend*," and returned it to the files of the second division. The envelope, on which the words already quoted were written, was not sent to the file, but was retained in the Postmaster General's own possession, and the decision indicated was not entered upon the contract. The official evidence therefore was, that the final decision of the Postmaster General was suspended.

The memorandum upon a paper retained in his private possession could not, it is presumed, constitute an official act, and can

be taken only as evidence to prove what, at the moment, were his individual views upon the merits of the claims.

2. These facts are corroborated by the entry recently made upon the contract by authority of my predecessor in the following words, viz: "*March* 31*st*, 1835." "It appears there was an order drawn early in May (June,) 1833, allowing 50 per cent. on pay from Baltimore to Wheeling, on account of increase of weight of mails, impediments in national road, &c., it was held under suspense for further consideration, and in February, 1835, confirmed by direction to financial branch, to place it to credit of contractors down to time of retrenchment, January 1st, 1834. Now order is given by the Postmaster General to continue the allowance of 50 per cent. from that date."

This clearly explains the entry of the word "*suspend*" on the letter returned to the files, and the entry of "*allowed*" on the envelope retained in my predecessor's private possession. The former was the official act; the latter a private memorandum.

3. There are abundant other evidences tending to show that neither party considered this allowance as definitively made in June, 1833.

In November, 1833, a retrenchment was ordered upon the services rendered, and compensation allowed, upon this route.

The time was extended from 2 days to 2½, and the allowance made for this increase of expedition discontinued -	$6,750
The allowance for extra horses and postillions was also discontinued - - - - - -	9,812
Making a retrenchment of - - - -	16,562

But while thus removing the basis on which it is alleged to have rested, no notice is taken of the 50 per cent. allowance now alleged to have been authorized in June, 1833.

4. In December, 1833, the Senate adopted a resolution calling for a report of all extra allowances made after the 6th April, 1829.

The Postmaster General's reply is dated March 3d, 1834, and is denominated "a statement containing all the allowances made beyond the sum stipulated in the original contracts, since the 6th April, 1829."

Although the allowances for the second daily mail, the increased speed, and extra horses and postillions, were embraced in this report, there was no mention of the 50 per cent. now alleged to have been allowed nine months before, and paid from the time of allowance. Nor do I find any paper, entry, or report, in the department tending to show that the allowance was made otherwise than is stated in the entry upon the contract.

5. The claimants themselves admitted, in a letter addressed to the department on the 15th December, 1833, that this allowance had not then been made. It will be recollected that the depart-

ment had ordered a retrenchment of $16,562 on their other allowances, to take effect on the 1st of that month, with one month's extra pay. In the letter already adverted to, they strongly remonstrate against the discontinuance of the extra horses and postillions, asserting that "the necessity for the postillions does not arise from another increase of expedition from 2½ to 2 days, or the discontinuance of that expedition might operate as a reason for the discontinuance of the postillions, but it arises from the increased weight of the mails, occasioned by sending on our route what was formerly carried by other routes, and which we could not have anticipated when we made our contracts."

After some further remarks, they introduce the claim of 50 per cent. as follows, viz:

"Our extra line, which carries the way mails, was expected to carry the newspapers; but *they* cry for a rapid conveyance of newspapers, has required us to carry them as swiftly as the letters, and the multiplication of them, from the circumstance of their being directed from other routes to ours, rendered it impossible for us to carry them in our swift line without nearly or quite doubling the stock, in addition to the expense of postillions for rising the mountains. In march last, supposing that the average weight of the mails would not exceed one thousand pounds, we proposed to put such additional stock on the line as would carry it through for an increase of 25 per cent. The service was ordered, but the pay not decided. When we tried the experiment, we found it would require double the stock, the weight of the mails had become so enormous."

5. "The letters from the postmasters on the route (herewith sent you) show the weight of the mails to be *two* thousand pounds."

"As our compensation remained for adjustment, we then proposed that you should allow us 50 per cent. increase, which would bear but a small proportion to the increased weight of the mails, and fall considerably short of the increased expense to which it would subject us, *independent* of the fact which every traveller on the route can establish, viz: that we reduced the number of passengers from *nine* to *six*, *being one third*, and amounting to more than the whole amount paid us for the transportation of the mail. We now most respectfully ask of you to take our case into consideration, and make us these allowances. It is not merely for the services performed by an extra line, but for the increased weight which we are required to carry, that we ask this remuneration."

It is impossible, therefore, that they could have considered this allowance as definitively made in the preceding June.

6. The claimants are in error when they state, that they had charged and received this allowance from the time they now allege it to have been made. No accounts rendered by them are to be found in the department of later date than Sept'r 30th, 1833. In their accounts for the quarter ending 30th June and 30th September,

of that year, this allowance is *not* charged. It is incredible that they should have omitted it if they had understood it to have been authorized; for, on the 30th June, it would have amounted to upwards of $28,000, and on the 30th September to about $33,000.

There is no evidence in the drafts, or other papers or records of the department, as far as I can learn, that one dollar was paid on this account prior to, or since, its recent allowance by my predecessor. No instruction was given by my predecessor to any one now in the department to pay any thing, and the only information I am able to collect on that point is from the pay clerk, who informs me that the former treasurer, Mr. Brown, told him that he was authorized to make advances on account of such an allowance. That their account appears on the books as largely overpaid, without including this allowance, and often considerably overpaid with it, is an undeniable fact; but this was its condition prior to June, 1833, as well as since, though to a less extent. The payments made to them have all been *on account*, there not having been a settlement with them since the 1st October, 1829.

By these evidences my own mind is clearly satisfied, that as much of this allowance as precedes the retrenchments of 1833 was finally authorized in February, 1835, and the balance of it on the 31st March, of the same year, as appears of record in the department; and if a doubt rested on the subject, I must, it appears to me, consider the official evidence as conclusive in all my own official acts.

The fact being thus established that this allowance was not authorized prior to February and March, 1835, it remains to be considered how far the act of my predecessor in making it then, and causing it to be entered, is conclusive upon me; and if that act be not conclusive, then to inquire whether the allowance itself be in accordance with law. Personally, it would unspeakably relieve me, and most agreeably diminish my responsibilities, if I could be persuaded that the decision of my predecessor in this case, and all others of a like character, are conclusive upon me, and that I have no other duty to perform in relation to them but to carry them into effect. But with the best consideration I can give the subject, I find it impossible to bring my mind to so agreeable a conclusion. Although there may be some *dicta* of judges or courts indicating a contrary doctrine, my mind is clear in the opinion, that in law the head of one of our executive departments *is always the same*, and that a Secretary or Postmaster General, for the time being, has just as much power over the decisions of his predecessor in any given case, as he has over his own. In any case where he might lawfully overrule or reverse a decision if given by himself, he may overrule or reverse it if given by his predecessor.

I am also clear in the opinion that, under our system of Government, it is not in the power of the accounting officers, the heads of departments, or the President himself, through errors or

misconstructions either of law or fact, to entitle any one to receive, or enable him to retain, any sum of public money which has been allowed to him without the authority of the Constitution and laws. And I hold it to be perfectly immaterial, whether it be recovered by a refusal to complete the allowance, by a recharge and stoppage of the amount from any public moneys of which he is in the current receipt, or by judgment of a court and execution thereupon. Nor is it in the slightest degree material, whether the proceedings in court be based upon a recharge by the accounting officers, or be in the form of an action on the case; for the statement of the amount, whatever shape it may assume, must come from the officers who have acted on it, and the sole point of any importance which the courts have a right to inquire into is, whether the money be actually due to the United States. If it come in shape of a recharge, they cannot rightfully refuse to give judgment if the money has been allowed or paid contrary to law; and if it be not a recharge, what more can they do?

Certainly, one of the peculiar duties of our Judiciary is, in all questions which may properly come before them, to correct any erroneous constructions which may have been put upon the law by executive officers. Our Government, in its dealings with individual citizens, is itself *one person*. That person, however, is made up of various members, such as its Legislative, Executive, and Judicial departments. The Legislative lays down the rule of allowances; the Executive carries it into effect; but if it miscontrue the rule, and pay money contrary to law, then it is the duty of the Judiciary, whenever the case is brought before them, to give the law its true construction, and enforce a repayment of the money. And surely it ought not the less readily perform this service, because the Executive has, in the mean time, discovered its error, and exerted all its means to correct it.

6. I cannot look upon our Judiciary in such cases as intended merely to shield individuals against the Government. It is itself *a part of the Government*, and its decision on a point of law is the final decision of the Government. In giving such decisions, it is as much bound to protect the whole people against erroneous decisions of executive officers on such points, as it is to protect individual citizens in their legal rights. Least of all things can it have been designed to shield and protect private citizens in the possession of money or property illegally obtained through the errors of public officers, under the allegation that the Executive cannot correct its own errors when discovered and notorious. And it has as little right to suppose that the Executive has made, or can make, recharges for purposes of oppression, as the Executive has to suppose that its decisions are induced by dishonest or party motives.

The conclusion I deduce from these principles is, that, in the eye of the law, nothing is final in the settlement of accounts, about the legality or justice of which a question can be raised before the courts

of justice. The Government, like individuals, may recharge and sue whomsoever it pleases; but if its suits be frivolous, or malicious, they will end as such suits brought by individuals do, so long as we have an honest judiciary. Nor is it any adequate objection to this principle to say, that there are many cases in which, upon a recharge, the subject cannot be brought before the judiciary; for this argument can prove nothing more than a defect in our system. In cases which can be brought before the judiciary, there is the oppressed man's remedy; and in cases where it cannot, he has his appeal to the legislative authority.

But, in the case under consideration, it is not necessary to resort to these broad principles, nor do I conceive that it has been touched by any of the decisions quoted or referred to by Mr. Key.

It is conceded on all hands, I believe, that all mistakes and errors in an open account may be corrected, especially if the account be still under the control of the officer who has committed the mistake. If the Secretary of the Navy authorize an allowance, and before the paper, on which the authority is given, go out of his possession, he discover that he was in error, he may countermand his act. If the auditor determine that he will pass an account, and put an endorsement to that effect upon it, and before he reports it to the comptroller discover that he was in error, whether in reference to the facts or the law, he may reverse his decision. So of the comptroller.

The Postmaster General, if he can be considered, in relation to accounts, as having any final power, unites in himself the authority of a secretary, comptroller, and auditor. If he has their united authority in *passing accounts*, he unquestionably has in correcting errors. It follows that, before any account is finally closed by him, he may, and it is his duty to, correct all errors, whether originating from misapprehension of facts or misconstruction of law.

In this case the account is still open, not having been closed since October, 1829. It is, in all its parts, and certainly in reference to these allowances, still in the Post Office Department—still under the supervision and control of the Postmaster General.

To me it is palpable—

1st. That my predecessor was misinformed as to important facts concerning this allowance, and radically affecting its justice and equity; facts clearly showing that a portion of the service was never rendered, and that another allowance had been made for so much of it as had been rendered.

2d. That he misapprehended the law, when he supposed that it gives the Postmaster General authority to make any allowance whatsoever for such a service.

The errors consequent upon these misapprehensions of fact and of law, I should feel it my duty to correct, had I the powers of a secretary, auditor, and comptroller; at least in any account not closed by my predecessor.

In point of fact, however, the Postmaster General has not the power of a secretary, auditor, and comptroller, over the accounts of his department; and whatever of importance the growth of that department and public opinion may have given him, he is in law, so far as regards pecuniary matters, little more than a disbursing officer of the Government.

The first section of the Post Office law of 1825 contains the following provisions, in relation to the duties of Postmaster General, viz:

"He shall pay all expenses which may arise in conducting the post office, and in the conveyance of the mail; and all other necessary expenses arising out of the collection of the revenue and management of the General Post Office. *He shall prosecute offences against the Post Office Department. He shall, once in three months, render to the Secretary of the Treasury a quarterly account of the receipts and expenditures in the said department, to be adjusted and settled as other public accounts.*"

The Postmaster General, therefore, is in this respect a mere disbursing officer. His decisions upon allowances, and accounts, are no more final than those of a paymaster in the army, or a purser in the navy. His errors, both of law and fact, so far from being conclusive, are subject to the correction of the fifth auditor and first comptroller. It is their imperative duty to disallow every item which is not in accordance with the law of the land, or not supported by sufficient proofs of the performance of the services.

As a disbursing officer, therefore, whose account must undergo the ordeal of the Treasury, what are the powers and duties of the Postmaster General? May he not correct all errors in his accounts before they are rendered? Is it not his duty to correct all which may be discovered? If my predecessor, through any misapprehension, may have made an illegal allowance, and I pay the money, would not the accounting officers, if they did their duty, disallow it to me? And am I not responsible for all payments I may make on credits I may give on any illegal allowances, which may inadvertently have been authorized by him? To me the question seems clear.

The entry upon the books of the Post Office Department, which Mr. Key argues is the conclusive act, is, under this view of the case, an entry on the books of a disbursing officer, and nothing more. It is conclusive no further than entries upon the books of paymasters and pursers are conclusive. It cannot have the least effect in establishing the claims at the Treasury; for what is there which the Postmaster General charges in his quarterly accounts which is not entered upon some book in the department?

It cannot be necessary to argue this point further. That it is my duty to refuse payment of all allowances which in my conscience I believe to be illegal, and to correct all credits of the same character in accounts not rendered to the Treasury, I cannot doubt.

If you shall be of opinion that I have legal authority to look into the matter and correct the errors of the accounts, then I request your further opinion as to the legality of any allowance whatsoever under the contract of the claimants for an increase in the weight of the mails.

Their contract is "*to carry the mails of the United States.*" What is "*the mail of the United States?*" It is not one letter, nor a hundred letters; it is not one pound of letters or newspapers, nor one hundred pounds, nor one thousand pounds; but it is *all* the letters, newspapers, pamphlets, and other matters legally transported by the mail, which may be handed to the contractors for transportation. The contract, therefore, is to carry all this matter, less or more, light or heavy—its variations being one of the obvious contingencies against which the contractors should guard in making their proposals.

The 43d section of the Post Office law of 1825 is in the following words, viz:

"And be it further enacted, that no additional allowance shall be made by the Postmaster General to the contractor or carrier of any mail, on any route, over or beyond the amount stipulated in the contract entered into for the transportation of the mail on such route, unless additional service shall be required; and then no additional compensation shall be allowed to exceed the exact proportion of the original amount to the additional duties required; and the Postmaster General, in all such cases, within 30 days thereafter, [shall] transmit to the First Comptroller of the Treasury an account of such additional services, and the compensation to be allowed therefor."

My understanding of this prohibition is clearly expressed by the majority of the Post Office Committee of the House of Representatives in their report, pages 12 and 13, from which I submit the following contract, viz: "The extra service, for which an extra allowance is authorized to be made by the 43d section, must be in 'addition' to that required by the contract. None of the mail contracts contain any limitation of weight in the mail to be transported; they, therefore, bind the contractor to carry all packages proper for mail transportation, whether attracted to a particular route in preference to others by its superior safety, or the increased celerity and frequency of its trips, or arising from an extraordinary increase of population and business upon such routes. Such services, whatever may be the bulk or weight of the mail, can in no sense be regarded as in addition to those required by the contract; they are strictly and properly within it."

"In the opinion of the committee, therefore, there is no authority in the act of Congress for granting an 'additional allowance' to any contractor, on the ground of an increase in the weight of the mail transported by him, when that increase is owing to the attraction of packages from a slower to a more rapid line. This would be

the usual and obvious result of giving an accelerated speed on one of several routes leading to the same region of country. A result which, if regarded of any consequence, could not escape the forecast of persons contracting to give the increased speed, and which, therefore, they would be careful to provide against in the compensation they would exact for the service."

To this it may be added, that allowances for an increased weight of the mail is very unusual, if not wholly unprecedented; and that, if the principle were once established that such allowances are legal, the department would immediately be pressed with such claims to an immense amount. It is not intended, however, to be denied that circumstances may arise in which such a claim would be just; the only point on which I wish to express an opinion is, that the Postmaster General is not authorized by law to make them, and that the only proper course of relief is in the Congress of the United States.

Herewith I transmit the memorial of the claimants, together with Mr. Key's argument, and the papers which were handed in with these two documents.

AMOS KENDALL.

P. S. The 50 per cent. allowance embraced in the foregoing statement amounts to $62,575 50. The remaining $21,702 50, making up the $84,278 allowed on those routes, consists of $9,437 50, for running through in two days, since the 1st of January, 1834, and $12,265 for extra horses and postillions from the same time. But there is no question connected with these items not involved in the proceeding to which it seems necessary to call your attention. I have added to the papers forwarded Mr. Stockton's letters of 27th March and 2d June, 1833, the envelope adverted to, and a copy of R. C. Stockton's account, in which all these matters are embraced.

Copy of a letter from Postmaster General of the United States to the Attorney General of the United States, (marked b 1,) and referred to in defendant's second bill of exceptions.

POST OFFICE DEPARTMENT,
6 *July*, 1835.

Hon. BENJAMIN F. BUTLER,
Attorney General of the United States:

SIR: That portion of my statement in the case of Messrs. Stockton & Stokes, in which the Postmaster General is considered as a disbursing officer, accountable to the Treasury Department, was communicated by me to Mr. Key, and upon his request I readily consented to receive from him an additional argument, which I have now the honor to transmit.

It contains nothing which seems to me materially to weaken the views I have already submitted; but the great importance of the principles involved, induces me to add a few remarks.

In relation to the subject of accounts, the functions of executive authority in our Government may be considered as divisible into three parts:

1. That which makes contracts and regulations, and gives orders and directions out of which accounts originate.
2. That which pays the money.
3. That which settles the accounts.

In some of the departments these functions are performed by three sets of agents. In the Navy Department, the Secretary of the Navy and his ministerial agents, the navy commissioners, make contracts and regulations, and give orders and directions out of which accounts originate. The navy agents and pursers pay the money. The fourth auditor and second comptroller settle the accounts. The War Department is organized in a similar manner.

All these sets of officers are bound to discharge their duties according to law. If the Secretary of the Navy direct an expenditure, and the navy agent pay the money, and the fourth auditor and second comptroller deem the expenditure illegal, they never hesitate to disallow the payment in settling the navy agent's accounts.

The principle and practice have been settled in so many cases, and are so clearly in accordance with the laws which prescribe the powers and duties of those several officers, that they are not now contested. Hard cases may and do arise, but relief is always found by petition to the legislative power.

The Postmaster General unites in his own person two of these three functions of executive authority. He makes contracts and regulations, and gives orders and directions from which accounts originate, and he pays the money.

The question now in issue is, whether he does not substantially possess the third also, and has not power conclusively to settle those accounts which he originates and pays. Mr. Key argues that he does; I maintain that he does not.

The proposition need but be stated, to satisfy any considerate man, that it is unsafe to lodge these three functions in the same hands. What may not a man do who has power to make contracts and regulations, and give orders and directions for the expenditure of two millions of dollars annually—who has power to construe not only his own acts, but the laws which should govern him—who pays the money according to his own will—and who finally settles conclusively all the accounts, without supervision, check, or control? It cannot be that we have such a man in our well-balanced Government.

But the Postmaster General does unite the powers of a Secretary of the Navy, with his ministerial assistants, and of the disbursing officers of that department. Is that a reason why he should be construed to possess the power of the auditor and comptroller also? Far from it. The union of the two powers constitutes a strong argument why he should not possess the third. The law in

this respect accords with sound policy. It creates treasury officers independent of him, to whom he is required to render quarterly accounts of all his disbursements, "*to be adjusted and settled like other public accounts.*" In the adjustment and settlement of other public accounts, they inquire, first, whether the expenditures are in accordance with law; and next, whether they are properly vouched. Is there any thing which exempts them from this duty in settling the Postmaster General's accounts? On the contrary, does not the law expressly require it of them? And when they reject an item in his account for illegality, what do they more than when they reject, on the same ground, an expenditure in a navy agent's or purser's account, ordered by the Secretary of the Navy? There is less hardship in the case of the Postmaster General, because the inconvenience and possible loss falls directly upon him who gave the illegal order. Why are duplicate contracts made by the Postmaster General required to be sent to the Treasury; and why is he required to report all additional services ordered and compensation allowed within thirty days? Is it not for the same reason that the contracts of the War and Navy Departments are required to be filed there? Is it not that the auditor and comptroller may refer to them, in conjunction with the law, upon the settlement of the accruing accounts?

True it is, that a contractor cannot present his account at the Treasury for payment, simply because there is no money in the Treasury out of which it can be paid. It would have been an anomaly if the law had required those accounts to be presented to the fifth auditor for adjustment and payment out of the Treasury, when the whole system was so framed as to exclude the possibility of their payment there, and place in the hands of the Postmaster General the funds to pay them. It is the Postmaster General's account only which they have power to settle, and contractors' accounts can come before them only as items in that account. And in this respect the mail contractors are practically on the same footing as most of the contractors with the Navy Department, whose accounts appear only as items in the navy agent's accounts. The difference is, that if a navy agent refuse to allow a charge, the claimant may present it directly to the Treasury for allowance and payment—a privilege which the law does not secure to the mail contractor.

That the Postmaster General is not responsible to the Treasury Department in his administrative capacity, is readily conceded. He is in that respect as independent as one of the secretaries; but not more so. If, in consequence of any order or direction of his or theirs which the accounting officers of the Treasury deem illegal, a payment of money take place, credit for such payment, by whomsoever made, will be refused, if those officers do their duty. If more serious consequences fall upon the Postmaster General, it is not because of his inferiority, but because he performs a function

which the secretaries do not, and therefore encounters a responsibility which they do not. But Mr. Key's argument, in its results, would raise the Postmaster General above the secretaries, in his administrative capacity. Their orders, decided to be illegal, are made void by the accounting officers of the Treasury refusing to allow credits for the resulting expenditures; but if Mr. Key's argument be sound, they cannot call in question an order of the Postmaster General for a like cause. While the secretaries are thus checked, he is above control, giving orders, paying money, and settling his own account; or, what is the same thing, sending an account to the Treasury to go through the forms of settlement by those who have no authority to call in question a single item, however extravagant and illegal. I reject all arguments predicated on the dignity or importance of the station. In this country the highest are not above the law, and there is no man who has not his superior. Our inferiors in one respect are our superiors in another. In deciding points of law involving public expenditures, the comptrollers of the Treasury have no superiors, unless it be the courts of justice. The auditors and comptrollers are both superior to the heads of departments and the President himself, being under a paramount obligation to decide according to the Constitution and laws, when they come in conflict with the orders and regulations of their nominal superiors. Unquestionably it was to make them efficient checks in the Government, that, in their official tenure, they are made independent of the heads of departments, even of the Treasury Department, to which they belong; and happily would it be for the Government, I verily believe, if they asserted more frequently and more resolutely their legal authority and official independence.

I perceive nothing in the law relative to the post office suits which conflicts with the views I have taken. It is certainly peculiar, as are many other provisions relative to this department, and vests in the Postmaster General powers which other heads of departments do not possess. Accord to him all the law gives him; but, while heaping powers upon him, let him not be released from responsibilities. The greater the power, the greater and more strict should be his accountability; and to a construction of the law tending to that result I should unquestionably lean, in all cases of doubt.

I believe all the points of Mr. Key's additional argument may be considered as embraced in the foregoing remarks, which are respectfully submitted, to be considered in connexion with my former statement.

AMOS KENDALL.

P. S. Since the above was commenced, R. C. Stockton, esq., has handed me another statement, to which is annexed an opinion of Mr. John Glenn, esq., an attorney in Baltimore, and an affidavit of the late treasurer of the department, O. B. Brown, which, also,

I herewith transmit. The first of these papers only refers to the case submitted. The facts, you will perceive, are very imperfectly set forth, and some of the most essential entirely omitted. The controlling part, that the Postmaster General did on a public paper write the word "*suspended*," and place it on the public files, at the same time that he wrote "*allowed*," &c., on a paper which was retained in the private possession of the treasurer or himself, is not noticed.

This of itself shows the imperfection of the statement, and the error of Mr. Brown's *ex parte* affidavit. Moreover, Mr. Stockton's account shows that no payment was made on this allowance in June, 1833, and that, as late as 30th September of that year, they had not even made a charge. Moreover, I have in my possession a paper without date, but evidently made out late in 1834, or early in 1835, in Mr. Brown's handwriting, to guide the pay clerk in making entries in Mr. Stockton's account, on which, as I am informed, this fifty per cent. first appeared as a credit to which he was entitled.

On the whole, I believe the facts to be, in that respect, as represented in my former communication.

AMOS KENDALL.

Opinion of Benjamin F. Butler, Attorney General of the United States, referred to in defendant's second bill of exception, marked C 1.

ATTORNEY GENERAL'S OFFICE, *October 10th*, 1835.

SIR: I have the honor to acknowledge the receipt of the additional observations of Mr. Key, and the opinion of Mr. Glenn, in the case of Messrs. Stockton and Stokes, and L. W. Stockton, referred to me by your communications of the 30th of June and the 6th July last; and as I am now in possession of all the arguments intended to be submitted for my consideration, on the part of the contractors, I will proceed to state my views on such parts of the case as are proper to be examined in this office.

Your communication of the 30th ultimo, after stating the condition of the Post Office Department at the time you took charge of it, proceeds to inform me, that you had deemed it proper to suspend, from the credit of the above named contractors, certain special allowances recently made to them by your predecessor in office, for the transportation of the mail on the routes from Washington to Philadelphia, and from Washington to Baltimore and Wheeling; that the contractors object to this procedure, on the grounds, among others, that the greatest of those allowances (being those on the Washington and Wheeling routes, and amounting to $84,278) were definitively made by the Postmaster General in June, 1833, and have constituted a portion of their regular pay ever since; that for the purpose of ascertaining whether there might not be a partial relaxation of this suspension, you have examined the merits of those

particular claims, and having come to the conclusion, that the allowances therefor were based on misinformation as to the facts, and on an erroneous view of the law, [and] have decided that they ought not to be consummated; and that the contractors, being dissatisfied with your decision, have requested that the law points might be submitted to the Attorney General for his opinion.

It further appears, from the documents before me, that discrepancies exist in regard to several important facts, between the statements made by the contractors and their counsel, and the narrative submitted to me in your official communication; and also that, in respect to various points depending on circumstancial evidence, the contractors and yourself have come to entirely opposite conclusions. On this part of the case, you are doubtless aware that the Attorney General has no authority to give an official opinion. The act of 1789, which, so far as this point is concerned, contains the measure of his powers, merely authorizes him "to give his advice and opinion upon *questions of law*, when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments." In conformity to this law, and to the usages uniformly adopted by my predecessors in office and myself, I shall abstain from any investigation of disputed facts. Without attempting to reconcile any of the conflicting statements, or to ascertain the accuracy of either of the opposing inferences which appear in the paper before me, I shall take it for granted, for the purpose of this opinion, that the statements and conclusions presented to me in your official communication are the real facts of the case.

It is obvious, that when the Attorney General proceeds to give his opinion and advice on any question of law, the facts giving rise to such question must be either stated to, or assumed by him; and when the head of the department calling for his opinion gives him those facts, he must necessarily adopt them as the basis of his reflections and judgment. Whether they are presented in the form of a direct statement, or of an argumentative examination of the circumstances, can make no difference. In either case, it would be manifestly improper to receive from any other source statements or inferences conflicting with those which are put before him by the only authority legally known to him in the premises. Its departure from official comity would not *not* constitute the only objection to such a course; it would involve an usurpation of power, for it would convert an office, created for the sole purpose of assisting and advising the executive departments on questions of law, into an appellate tribunal for the re-examination of their decisions on matters of fact.

Guided by the foregoing considerations, I have only to abstract from your official communications of the 30th ultimo and the 6th instant such facts as are pertinent to the questions propounded to me, or as may be necessary to a correct understanding of my opinion.

The material circumstances are as follows: Messrs. James Reeside, Richard C. Stockton, and L.W. Stockton, under the advertisement for mail contracts in 1831, offered to carry a daily mail from Baltimore and Washington to Wheeling, in three days and four hours, for the annual pay of $4,550. This offer, however, contained a proposition for an improvement; i. e., to run through in two and a half days, and to run also a tri-weekly line to carry the way-mails.

This was agreed to by the department, and the service directed from the beginning of the contract, at an additional compensation of $8,950. They were also directed to increase their speed, so as to run through in two days, at an increased compensation of $6,750; thus making their annual compensation, when they entered upon the service, $20,250.

They were afterwards authorized to transport the mail from Baltimore to Frederick upon the railroad, and an allowance, taking effect on the 1st February, 1832, was made therefor, at the rate per year of $2,406.

During the year 1832 the contractors charged and were paid according to the foregoing rates. In the winter of 1832–'3, the contractors charged and were paid according to the foregoing rates. In the winter of 1832–'3 it was alleged by them that, in consequence of the increased weight of the mail and the badness of the roads, they had been obliged, in order to get through in time, to employ extra horses and postillions, for which they claimed and were allowed, from the 1st of January, 1832, the annual sum of $9,812; and at or about the same time they claimed and were allowed, for raising the tri-weekly mail into a second daily mail, (the allowance to take effect from the 1st of January, 1832,) the further sum of $6,400—thus making the annual pay of the contractors $38,508.

At the end of the first quarter of the year 1833 the contractors, for the first time, charged and were allowed for extra horses and postillions, and for the second daily line, introducing an item, $16,212, for the same services during the year 1832, which was passed to their credit; but the annual compensation, to which they considered themselves entitled, at the close of the first quarter of 1833, is stated to have been $38,508. The leading item now in controversy, as I understand, is an additional allowance of 50 per cent. on that sum, to take effect from the 1st of January, 1832, making an annual amount, since that time, of $19,254. The history of this special allowance, as presented in your communication, is briefly this:

On the 27th March, 1833, a letter was addressed by R. C. Stockton to the Postmaster General, stating that, in consequence of the increased speed on the Cumberland road, the great eastern mail, which had previously gone by other routes, had been thrown upon their route, and had so increased the weight and bulk of their mail

as to render it impossible to carry it with the rapidity required, without making special extra provisions therefor. He therefore prayed the Postmaster General to make them a special allowance, and said that, if an addition of 25 *per cent.* could be made to their compensation, they would instantly prepare for any emergency, either by running double lines, or increase their stock, or by running separate vehicles. This compensation, he suggested, would but partially remunerate them for their necessary increase of expenses, and they "trusted the department would conceive it but reasonable to grant it from 1st of January," by which date, as Mr. Stockton subsequently alleged, was intended the 1st of January, 1832.

The Postmaster General, by memorandum in writing at the foot of this letter, directed that the services should be required, "the question of compensation and the amount of it to be reserved for future consideration." This decision *decision* was communicated to the contractors by letter dated the 28th of March, 1833. In this letter the contractors were informed that the Postmaster General required that a full daily line of four-horse post coaches should be substituted for the tri-weekly line of post coaches which they were then running, "that is, that you run two full lines, the fast and the ordinary one," &c.

On the 2d of June, 1833, another letter was addressed by R. C. Stockton to the department, adverting to the former letter and the order taken thereon, and adding that they had since found that the increased weight of the mails so far exceeded what was supposed, that less than an allowance of 50 per cent. would be altogether insufficient to sustain them in the additional expenditure, and therefore praying an allowance of 50 per cent., and requesting that this letter might be attached to their former application.

It is alleged by the contractors that the then Postmaster General did at that time definitively allow this claim of 50 per cent., to take effect from the 1st of January, 1832, and did then also authorize its payment, and that it has constituted a portion of their regular receipts from the department ever since; but after reviewing the evidence on this point, you have come to the conclusion that these allowances were kept under consideration, and were not actually made by your predecessor until the months of February and March, 1835, when he directed them to be passed to the credit of the contractors. And although certain advances were made by the department to the contractors, which may have been intended to be covered by these allowances when finally confirmed, yet you have also come to the conclusion that those advances must be officially considered as having been made on general account. Your decision, therefore, in respect to this disputed fact, is, that nothing has been paid on account of the allowances in question, either before or after they were ordered to be made. It also appears that the general account of the contractors in this case is

still open, not having been settled in the Post Office Department since October, 1829.

Under these circumstances, you request my opinion on the two following questions:

I. How far the acts of your predecessor, in directing the allowances above mentioned, and in partially carrying them into effect, are conclusive upon you? and

II. If they are not conclusive, then whether any allowance whatever can be made under these contracts for an increase in the weight of the mails?

I. In answer to the first of these questions, I have the honor to state, that in my opinion the acts of your predecessor, directing the allowances above mentioned, are not conclusive upon you; that you have competent authority to look into those allowances, and in case you shall find them to have been found on material errors of fact or of law, that you have not only the power, but that it will in such case become your duty, to correct such errors, by reversing, either in whole or in part, as justice shall require, the proceedings in question.

I place this opinion on two grounds.

1st. On the general principles of law, applicable to the office and powers of the Postmaster General in all cases, and especially in cases like that now before me; and

2d. On the peculiar posture in which the acts in question were found by yourself, when you entered on the duties of your office.

1st. By the first section of the Post Office law of 1825, it is made the duty of the Postmaster General, among other things, "to provide for the carriage of the mail on all post roads that are or may be established by law, and as often as he, having a regard to the productiveness thereof, shall think proper;" and also "to pay all expenses which may arise in conducting the Post Office and the conveyance of the mail, and all other necessary expenses arising in the collection of the revenue and management of the General Post Office."

The fourth section authorizes him to enter into contracts, for a term not exceeding four years, for extending the line of posts; and the tenth section imposes the same limitations, as to time, on all other contracts for the conveyance of the mail.

The forty-third section, by necessary implication, authorizes him *necessary implication*, *authorizes him* to make additional allowances to contractors or carriers of the mail, over and above the amount stipulated in the contract, *provided additional services shall have been required;* and with the further restriction that no additional compensation shall be allowed to exceed *the exact proportion of the original* amount to the additional duties required.

The provisions which I have quoted impose on the Postmaster General duties of a very onerous nature; and the powers which are necessary to their faithful execution are either expressly or by

necessary *to their faithful execution, are either expressly or by necessary* implication conferred upon him. These powers include a very liberal discretion in regard to the frequency of the mails and the manner in which they are to [be] carried, and also as to the terms, in regard to compensation and other matters, of all contracts for those purposes. His discretionary powers in these respects are, for the most part, entirely undefined by any statutory provisions.

But though not expressly defined, these discretionary powers are necessarily limited by the acts of Congress establishing and regulating the department. They are also limited and controlled by the general law, in which it will of course be understood that I include the Constitution of the United States.

The Postmaster General having authority to make contracts for the conveyance of the mail, all legal contracts duly entered into by him, and which are not tainted with fraud on the part of the contractors, or capable of being avoided by reason of material error of fact, are obligatory on the Government, and of course conclusive on the Postmaster General who made the contract, and on his successor in office. And when such contracts are faithfully performed, they vest in the contractors a valid claim for the stipulated compensation, the payment of which cannot be causelessly withheld or delayed without a breach of national faith. The same remarks may be applied to agreements or orders for additional allowances, lawfully made in pursuance of the forty-third section. Such allowances are in truth supplementary contracts; and when the additional services, for which alone they can be made, shall have been faithfully performed, the rights of the party will stand on the same footing as if the services and allowances had been expressly included in the original contract.

Every contract, whether original or supplementary, obtained from the Postmaster General by fraud of any kind on the part of the contractors, or made by the Postmaster General under mistake as to material matters of fact, is voidable at the election of the Government. This is the rule between individuals, when contracts made by them are affected by fraud or mistake; and it applies to the contracts of the Government, with no other difference than that occasioned by the incapacity of the Government to be sued. Its immunity in this respect will enable its agents, in all cases when the fraud or mistake has been detected before the payment of the money, to protect the interests of the public without resort to suit; but when the money has been paid, and it is desirable that the contract should be rescinded, that end can only be accomplished through the medium of the courts of justice. It is true that the terms on which the Government will be relieved from such contracts by the courts, will be different in the two cases of fraud or mistake, but its right to be exonerated from the contract is as clear in the one case as in the other. The only difference is, that when the contractor has been guilty of no misrepresentation or suppres-

sion of facts, or other fraud, the courts will see that he is fully paid for his services and expenditures according to the contract, until it shall have been legally rescinded. But as fraud vitiates every thing, the party who is guilty of it is entitled to no such immunity. He can claim nothing from his contract—he is only entitled to a reasonable indemnity for his services; and from the amount which may be allowed to him, the damages and expenses occasioned by his misconduct are first to be deducted.

As the Postmaster General is merely the agent of the Government, and has but a limited authority, it is only such acts as are within the scope of that authority, and conformable to law, that are obligatory on his principles. Every citizen is chargeable with a knowledge of the law; and all persons who make contracts with the Postmaster General must be presumed to be acquainted with the extent of his powers, and with his departure from them, where his contracts or other acts are contrary to law. No person, therefore, can rightfully claim any benefit as against the Government under a contract or other act made or done by the Postmaster General in contravention of law. Every such act is wholly void,or, as the lawyers express it, *is void from the beginning*, and no legal right can be founded thereon.

It results from the preceding views, that moneys paid by the Postmaster General to a contractor, who obtains them by fraud, or through mistake as to material facts, or in cases prohibited or unauthorized by law, may be recovered back in a suit brought for the purpose.

The Postmaster General is not only authorized, in the cases above stated, to make contracts on the part of the Government, but he is also the agent by whom the contract, so far as it imposes duties on the Government, is to be performed. The most important of those duties is usually that of making payment, and this is to be done by the Postmaster General.

The Government cannot be sued on its contracts, and therefore its agents may withhold or delay payments, without subjecting their principles to the consequences usually attending such acts. The only remedy of the creditor, except where he has in his hands the moneys of the Government, and is thus enabled to avail himself of a lien, or to drive the Government to a suit in which he can have the benefit of a set-off, is by an appeal to Congress. This very circumstance, however, increases the obligation of the Government to execute all lawful contracts duly made by its agents with promptitude and fidelity.

The Postmaster General, and all other paying agents, should, in all fair and plain cases, act upon this principle. Payments should never be withheld when in possession of adequate means, unless the officer be well satisfied, and on good grounds, that the money, if paid, could, for one or other of the reasons above mentioned, be immediately recovered back. But whenever the conviction is honestly

entertained, that by reason of fraud, or of mistake or illegality in the contract, the moneys, if paid, could be reclaimed by the Government, in every such case the officer not only has the right, but it appears to me that it is his duty to suspend the execution of the contract, by withholding payment, and to leave the party to his application to Congress. Such a step ought not indeed to be taken, except upon the clearest convictions of its justice and necessity, because if it should chance to be ill founded, it might operate to the serious injury of an innocent *man* party; but even where such injury occurs, it is not to be deemed irreparable, the legal presumption being that Congress will do ample justice in the premises.

Although the act of Congress establishing and regulating the General Post Office recognises the fact that the person holding the office of Postmaster General may die, resign, or be removed from office, and that the powers and duties of the office may thus be devolved on another individual, it yet manifestly proceeds upon the principle that the duties of the office, by whomsoever it may be held, are at all times the same, and are always to be executed in conformity to the special requirements and general principles of law.

The incumbent of the office for the time being is clothed with all its powers, and charged with all its duties; and in regard to all public matters he, and he alone, is legally responsible. His own convenience and the stability of administration will usually be promoted by completing the unfinished determinations, and even the incipient designs, of his predecessor, yet he is not absolutely bound to carry them into effect. As a general rule it will no doubt be best that he should do so; but as to every thing which rests *in fieri*, which is yet executory, he has a right to examine and to decide for himself; and if on such examination he shall deem the proposed measures inexpedient, he is not obliged to execute them, nor is he authorized to do so if he finds them to be illegal. I am now speaking of those determinations and designs which may properly be regarded as exclusively public, and not of acts or arrangements which also affect individuals, and under which private rights may have been acquired. The latter will hereafter be adverted to.

The daily recurring duties of this office are so multifarious and burdensome, that the public have generally no right to expect that a new Postmaster General will, immediately on his entrance into office, set about the task of examining the administration of his predecessor, with a view to the detection of errors in principle or in practice. Under ordinary circumstances it will be a sufficient vindication of the new officer, especially in reference to acts done by him soon after his induction into office, that they were either specially directed by his predecessor, or authorized by the general principles of administration established by him. But as the law of the land is the only true guide to the incumbent, he is bound, at

the earliest practicable moment, to acquaint himself with its provisions; and whatever may have been the usage of the office, or the special arrangements of his predecessors, he must regulate his own conduct by this paramount standard. And so far from imitating and acquiescing in those usages and arrangements, without inquiry or reflection, he should seasonably compare them with the law; and if he finds them repugnant to it, he is bound at once to abrogate or modify them, so far as may be necessary to correct their illegality. The public, in every case, have a right to demand this from the new officer; and it is easy to conceive that, in some cases, it may become a duty more important than all others.

But though the Postmaster General has no authority to bind his successor in matters of purely public concernment, the case is different in respect to transactions with individuals. His contracts with them, whether original or supplementary, when made in the cases and manner authorized by law, and when not affected by fraud, or material error, are, as already observed, obligatory on his successors.

The charge of the incumbent can in nowise affect or impair the rights of the individual contractor. A new Postmaster General cannot rescind or vary the contract made by his predecessor; but this incapacity is occasioned by the obligatory force of the contract itself, and not by the accidental circumstance that it was made through the agency of another individual. If that individual had continued in office, he could not have varied the contract in the slightest particular, except when authorized by its terms, or by the consent of the other party; and in this respect the new Postmaster General possesses precisely the same powers as his predecessor. Nor, on the other hand, can a change in the office impair or affect the rights of the Government in regard to private contracts, or the powers or duties of the agent to whom this branch of its affairs is committed.

But although the contracts of the department with individuals cannot be abrogated or varied by the mere act of the Government, or its agents, yet as they are liable to be avoided by the Government whenever it can show fraud or material error to have intervened, its agents, and especially the Postmaster General, in order to render this right available, must have authority to inquire into the circumstances under which they have been made; and this inquiry may as lawfully be made by the new officer, as by him who made the contract.

The same reasons of necessity and convenience which have already been referred to as likely to induce a new Postmaster General to acquiesce, as a general rule, in the dispositions made by his predecessors in matters of a public nature, will indeed apply with even greater force to contracts with individuals. But as the Postmaster General, by whom any such contract was made, had the undoubted power to re-examine the subject, for the purpose of

testing the accuracy of any complaint or suspicion of unfairness or illegality, and of verifying the truth of any material fact which entered into the contract, so also must his successor have the same power. The right to make this investigation belongs to the office, and not to the individual who may chance to fill it; and whenever the incumbent for the time being shall come to the knowledge, either by means of his personal investigation, or by information communicated to him by others, or in any other way, that any contract of the department is liable to any such objection, it is his duty to take such proper measures as circumstances may require, to protect the interests of the Government in the premises. If the money has been paid, the proper remedy will be by a suit in the appropriate tribunal; if the contract be yet unsatisfied, and the money unpaid, it would be idle and improper to make payment for the mere purpose of enabling the Government to maintain a suit to recover back the money. The simpler and more appropriate course will be to stop short with the contract, and to refuse to make any further payments thereon. It is obvious that the remarks before made, as to the caution which should attend such a step, even when taken by the very person who entered into the contract, will also apply in this place, and with greatly increased force; but in regard to the *right*, and under certain circumstances the duty of taking it, I cannot entertain a doubt. The Constitution declares that "no money shall be drawn from the Treasury but in consequence of appropriations made by law." Whether the public moneys at the disposal of the Postmaster General are technically in the Treasury or not, the spirit of this provision applies to them, and ought to be faithfully observed in their expenditure.

In contemplation of law, every such expenditure must be considered as ordered by the head of the department at the time when it is made. It is true that the pressure of business must necessarily prevent a special examination in respect to each particular payment on each particular contract, yet, as the Postmaster General is exclusively entrusted with the care and application of the moneys of the department, the law presumes that he does so far examine and decide in respect to each disbursement as to make himself legally responsible therefor; and, accordingly, his accounts are to be rendered to the auditor, and to be settled by that officer and the comptroller "*as other public accounts.*" (General Post Office law of 1825, section 1st.) To hold that an agent whose powers are thus circumscribed, and whose appropriation of the public moneys is thus to be made the subject of account, can be authorized to pay over those moneys to a party whom he conscientiously believes to have no lawful claim to them, would not only be repugnant to the spirit of the Constitution and of the law, but to the first principles of reason and justice. It can make no difference, in morals or in law, that an order is to be found in the records of the department directing the payment to be made. If the officer is satisfied that

there was no legal authority to make such order, or [that it was] *whas* made under erroneous impressions as to material facts, he is bound by the very nature of his trust to do what he can to arrest the procedure, and to protect his constituents from any further mischief by means of it. The first and most obvious step is to desist from applying the public moneys to a purpose which, if it be regarded by him in the light above mentioned, he must also see and feel is unauthorized by law.

The foregoing principles, as it appears to me, grow out of the general relation of principal and agent as it exists under our Constitution and laws in this particular department. It only remains, before I apply them to the present case, that I should vindicate or distinguish them from the objections contained in the arguments on behalf of the contractors, transmitted to me with your communications.

It is contended, that as the Postmaster General is authorized to make contracts for carrying the mail, and also to decide whether additional services are necessary, and to agree on the compensation to be made for them, *he has jurisdiction over these subjects, and that his decision, though erroneous, must be binding on the Government and on his successor in office.*

In support of this position several adjudged cases are referred to, in which the distinction between erroneous and void judgments has been recognised, and in which the courts, acting on that distinction, have held that the decisions of tribunals, and of officers having jurisdiction over the subject matter of such decisions, although admitted or supposed to be *erroneous*, were yet, for many purposes, held to be valid and conclusive; and in order to bring the present case within the principle of these decisions, we are reminded that it is the doctrine of the Supreme Court of the United States, and the understanding and practice of all the departments of the Government, to consider the contracts, decisions, and proceedings of the head of a department conclusive upon the particular department, unless material errors or new and important facts have been subsequently discovered; and also conclusive as against the Government, except when impeached in a court of justice on the grounds of fraud or mistake.

To support this latter suggestion, the cases of *The United States* vs. *Jones*, (8 Peters, 375;) *United States* vs. *McDaniel*, (7 Peters, 1;) *United States* vs. *Fillebrown*, (7 Peters, 28;) and *United States* vs. *Randolph*, (9 Peters 12;) the arguments of the Attorney General in several of those cases, and the official opinions of that officer and of the Secretary of War in cases presented for their decision, are appealed to by the counsel. But it is due to them to state that this part of their argument was founded on the assumption that the decision to consider the services in question as additional services, and to require them to be performed, was definitively made in June, 1833, the compensation then fixed and ordered to

be allowed, the money actually paid, and the allowance entered on the books to the credit of the company. In all these particulars, the statements and conclusions in your official communications are different from those of the counsel; and as I have felt myself bound to adopt your version of the facts as the correct one, the arguments and the authorities are, for the most part, inapplicable. Besides, several of the most important cases related to departments organized on principles, and proceeding in a manner, very different from those prescribed for the General Post Office. Still, I recognise the general accuracy of the doctrine above stated, and of the decisions and opinions referred to, and do not intend to lay down any principle which shall conflict with them.

It will also be perceived that the arguments referred to me fully admit that allowances made by the head of a department, which have been actually paid, and which have even gone into accounts settled by the proper accounting officers of the Treasury, may yet be judicially re-examined, in cases of *fraud* or *mistake* as to material facts, and the money obtained by means thereof be recovered back by the Government. They further admit, either expressly or by necessary intendment, that the head of a department, who has ordered a special allowance, has a right to modify, correct, or withdraw it at any time before it has been acted on and passed by the accounting officers, and entered on their books.

The preceding observations would be sufficient, I think, to dispose of the whole argument founded on the distinction between acts that are *void*, for want of jurisdiction, and those that are only *erroneous and voidable*, for error in the exercise of powers really possessed. But as it appears to me that this principle is only, to a very limited extent, applicable to the proceedings of the Post Office Department, I shall endeavor to point out what I conceive to be an erroneous use of the distinction referred to, in the remarks of the counsel. To do this with accuracy, the reason and design of the rule must be carefully borne in mind; and we must also take it in connexion with certain other rules, equally well settled and equally applicable to subjects of this nature.

The rule in question relates chiefly, if not exclusively, to the decisions of *courts* and of officers acting *judicially;* and is founded on the regard which the law pays to the intrinsic difficulties of the judicial function, and to the fallibility of human nature. Knowing the arduousness of many of the duties which devolve on the officer, and his liability to fall into mistake, the law, which never demands impossibilities, merely requires that he should confine himself within his legitimate sphere, and act with integrity and ordinary care. If he has jurisdiction, and only errs in the exercise of it, his acts are not void, but only *voidable.* The great purposes of the rule are, to shield the tribunal or officers from personal responsibility for mere error of judgment; to protect the ministerial officers by whom the judgments and other acts of judicial tribunals, or officers acting

judicially, are to be executed; and to prevent injustice to purchasers and other third persons, who have innocently reposed confidence in the validity of the proceedings. So long as the decision was clearly within the jurisdiction of the officer, third persons will be protected, whatever may have been his errors in judgment, or his impurity of motive; and if there be no impurity of motive, the officer himself will also be irresponsible. For all these purposes, it is in many cases necessary, that official proceedings, even though admitted to be erroneous, should yet be deemed *valid* until duly reversed; and that they should not be viewed collaterally, nor in any mode or by any authority, other than such as is appropriate and competent to their reversal.

But this rule does not imply that such proceedings are perpetually conclusive and irreversible. On the contrary, it admits that the decision, if erroneous, is liable in due form of law to be reversed; but it will not allow even such a decision to be impeached collaterally. And it is only whilst it remains unreversed that it is to be regarded as valid, or that parties and third persons can be protected by it. All acts done after any such decision has been regularly reversed, stand on the same ground, as if it had never existed, or as if it had been void from the beginning.

Where tribunals or officers undertake to act in matters over which they have no jurisdiction whatever, their proceedings are *void* from the beginning.

And even where they have jurisdiction over the subject, yet if they entirely depart in their proceedings from the positive requirements of law, such irregular proceedings are considered absolutely *void*, and not merely *voidable*.

Irregularities of this nature are not regarded as mere errors of judgment—mere mistakes in ascertaining the rules of law, or in applying them judicially—and therefore they are not viewed with the indulgence, nor entitled to the immunities, which are extended to such errors and mistakes.

On the contrary, they are looked upon as *excesses of jurisdiction*. Indeed, so far as the particular acts are concerned, there is *a want of jurisdiction* to perform them, and they are, therefore, justly involved in the general consequences of such a defect.

After this explanation of the doctrines referred to, it will be easy to show that they do not conflict with either of the general principles on which I rely.

The contracts of the Postmaster General, and the decisions and orders made by him, within the scope of his general powers, however erroneous, are undoubtedly valid, so far as to protect the subordinate and ministerial offices of his department who may carry them into execution, until reversed by competent authority. Nor will the Postmaster General be responsible for any error of judgment, however injurious it may be to the public interest, so long as he confines himself within his legitimate sphere, and acts in

good faith and with ordinary care. All this is perfectly consistent with the views above taken; or rather, in the statement of these views, these principles were remembered and taken into account. But even in cases where the Postmaster General has undoubted jurisdiction, he may yet commit errors; and though his decision be ever so definite and positive, and though it be reduced to writing, and recorded in the most solemn manner, it is still liable, if erroneous, to be reversed. This must be admitted, even in those cases to which the rule above mentioned plainly applies; it is involved, as has been shown, in the principle *of the* rule itself. The question then arises, how and by whom is the correction to be made? By what officer or tribunal is the erroneous decision, which all will admit must be corrected somewhere, to be reviewed and reversed? On this point, the distinction referred to, and the numerous cases cited by the learned counsel for the contractors in which it has been illustrated, shed no light whatever. But if the observations herein before made on the nature of the agency entrusted to the Postmaster General, and on the constitutional and statutary provisions which apply to it, be well founded, we are then authorized to say that, whenever the Postmaster General satisfactorily arrives at the conclusion, that any contract, decision, or order of the department, no matter when or by whom made, is erroneous in point of law, or founded on fraud or material error, he is not only authorized but bound so far to reverse it, as to suspend and refuse any further appropriation of the public money to the purposes of such contract, decision, or order. As to payments and other acts actually and definitively made and done under such erroneous decision, they must stand until corrected by the appropriate judicial tribunals; but as to all further proceedings, the Postmaster General may, as it seems to me, either act, or refuse to act, as in his judgment the law of the case and his duty to his constituents shall require.

The principles above stated, though sufficiently comprehensive to embrace all cases, may be applied with more safety, and with less danger of injustice or abuse, in some instances than in others. The particular acts of your predecessor, now in question, are of this character. They do not belong to the ordinary business of the department, but to a peculiar class of cases in which only very limited powers are given to the Postmaster General, and in which there is also considerable room for imposition on the one side, and for mistake on the other.

This portion of his powers is also regarded with some jealousy by the representatives of the people; and the manner of exercising it is consequently the subject of a more rigid scrutiny than perhaps any other branch of his important duties. It is also a part of the history of the country, that the propriety of such allowances as were made in the present case has, for several sessions of Congress, been made the subject of investigation by committees, and of discussions on the floor; and that in a bill concerning the Post

Office Department, which passed one House during the last session, several special provisions were inserted, for the purpose of circumscribing and regulating, by new guards, the exercise of this power. The allowances in question amounted to a very large sum, and were, moreover, among the last acts of the late head of the department. Under these circumstances, it appears to me that, if any doubt could exist as to your authority to look into the merits of the ordinary proceedings had by the department before your appointment, no well founded doubt can exist as to the possession of such authority in cases like the present.

2. The posture in which the matter stood at the time you came into office, is also deserving of much consideration.

It appears, from your statement of facts, that the order for these allowances were not made until February and March, 1835, and that nothing, either before or afterwards, had been definitively paid on account of them. The additional services performed in this case prior to February, 1835, whatever they may have been, could not have been rendered in consequence of these orders. The case is therefore, for the most part, free from the embarrassment and difficulty which would exist had the service been performed on the strength of those orders. And as the money has not been definitively paid on account of these allowances, nor the general account finally adjusted, I conceive that the orders must yet be considered unconsummated, and therefore peculiarly within the control of the present head of the department.

Considering, indeed, the peculiar circumstances of this case, and to my mind it is not at all doubtful that the paying of the amount, or the confirming of the credit, to the contractors, if this should be now done, would be officially and morally the act of the present incumbent. If he is to be responsible for the consequences, surely he must be authorized to exercise his own judgment as to the course to be pursued.

This leads me to notice the discussion which has been had between the counsel for the contractors and yourself, in regard to the powers of the Postmaster General in the settlement of accounts. I do not consider it necessary for my present purpose to enter into a very extended examination of this subject; but as it is one of considerable importance, and as you have particularly requested my opinion in respect to it, I will proceed to lay it before you, with the general reasons on which it is founded.

The Postmaster General is not only charged with the collection and care of all the moneys accruing to the post offices, but he is also a disbursing agent, and as such invested with a wide and very liberal discretion. Whenever the exigencies of his department require the employment of individuals, on the performance of any service, he is authorized to contract with such individuals, and to cause such services to be performed. He is empowered to settle the accounts growing out of all such transactions; and out of the re-

ceipts of the post offices, and such other means as may be placed in his hands by Congress, he is to pay the sums which he shall find due on such accounts, and all other expenses of the department. In making these payments, the *Pay*master General acts, to a considerable extent, at his peril; because the first section of the act of 1825 expressly provides that he shall, once in three months, render to the Secretary of the Treasury "a quarterly account of all the receipts and expenditures of his department, *to be adjusted and settled as other public accounts.*" See also section 41.

The fourth section of the act of the 3d of March, 1817, makes it the duty of the fifth auditor "to receive all accounts accruing in, or relating to, the General Post Office; to examine them, and to certify the balance and transmit the accounts, with the vouchers and certificates, to the first comptroller for his decision."

The effect of these provisions is to subject the Postmaster General to a legal accountability for all the moneys received in his department; they must be charged to him by the fifth auditor, and he can only be discharged by the allowance of credits for expenditures made in the department, and proved by competent vouchers rendered in his behalf. But it does not appear to me that the intervention of the accounting officers of the Treasury is at all necessary to the settlement of the accounts of contractors and other persons having demands against the department, so as to authorize them to require, and the Postmaster General to make, payment of such demands. As between the creditor of the department and the department itself, it is the duty of the latter to examine and adjust these accounts without unnecessary delay; and, as soon as the result can be satisfactorily ascertained, to pay to the creditor the balance which may be due him. It is true, as already suggested, that this course may subject the Postmaster General to some peril; but I cannot doubt that the hazard is one which belongs to his office as now organized by law.

In regard to the precise measure of his accountability, there is doubtless some room for diversity of opinion, or at least for various interesting questions. Is he entitled to a credit for every expenditure which he may show has actually been made by him in his department? Are the accounting officers of the Treasury obliged to pass to his credit, without inquiry or reflection, every such expenditure? On the other hand, is he to be held to the same rigid accountability to which inferior disbursing agents, such, for example, as army paymasters, or navy pursers, are usually subjected? If the latter is the case, I think few discreet men would be willing to assume the burthen and hazards of the office; and this furnishes a good reason for believing that Congress could never have designed so strict a construction. But then, if the accounting officers are to limit their inquiries to the mere facts of payment, without examining into the legality of the expenditure, the accounting will not be such as is required in other cases. We must therefore seek

for some rule of interpretation which shall avoid both these extremes.

The true meaning of that part of the statute which declares that the accounts of the Postmaster General shall be "adjusted and settled as other public accounts," is, I apprehend, that the same principle shall be applied to his accounts which is prescribed, and sanctioned by law and usage, for the settlement of accounts of other public agents whose accounts are analogous to his. The liabilities of paymasters and pursers, and of other subordinate disbursing agents, whose duties are defined by law, and who are not entrusted with discretionary powers, are not a fit standard by which to measure his responsibility. The public accounts which are most analogous are those of the agents employed by the heads of the other executive departments to disburse the moneys appropriated for the contingent expenses of such departments. In all these cases, the accounting officers are only authorized to look to the general nature and object of the expenditure; if it is one which really belongs to the contingent expenses of the department, they must, as a general rule, pass it to the credit of the officer. Whether it was discreet to incur any such expense in the particular case, and whether or not the amount of the expenditure was reasonable or excessive, are questions with which, in ordinary cases, the accounting officers have nothing to do. The head of the department, through the agent employed by him, is the appropriate judge on both points; and so long as the officer or agent acts in good faith and with ordinary care, he cannot be held responsible for any error of judgment. But if he applies moneys appropriated for the contingent expenses of the department to *other purposes* not authorized by law—above all, if *he applies them in a manner* and to purposes *forbidden by law*, they cannot be passed to his credit. The accounting officers, in every such case, must disallow the credit claimed, and hold the officer or agent responsible for the balance which may be found against him. In very gross cases, an expenditure, though for a legitimate purpose, may be considered as coming within the same principle, so far as to authorize the accounting officers to reduce the credit within reasonable limits. But this can only be done where there is a palpable abuse of discretion; because the head of the department, and not the accounting officer, is the person to whom the discretionary power, so far as it can lawfully be exercised, has been exclusively committed.

These, as I understand, are substantially the principles observed in the accounting offices in the settlement of accounts for contingent expenses; and these are also the principles which, as it appears to me, ought to be applied to the general accounts of the post office. In so applying them, the accounting officers will allow to the Postmaster General every expenditure made for his department, for any lawful purpose, without regard to its amount or to the wisdom of incurring it. For example—whether or not it was expe-

dient to cause a daily mail to be transported on a given route; whether, on another route, it would have been judicious to employ a weekly, instead of a semi-weekly one; whether the compensation agreed to be paid, in any particular case, was too much or too little; whether it was necessary and prudent, in a case like that under consideration, to call for additional services, involving the necessity of making large extra allowances beyond the original contract;—and all other questions of this nature, are matters with which the accounting officers have no concern; they belong, necessarily and exclusively, to the Postmaster General.

But whenever the accounting officers can see, by the face of the account, or by the vouchers produced in its support, that moneys have been paid by the Postmaster General in cases, or for purposes, not authorized by law—and still more, when they perceive that such payments were directly contrary to law—it will be their duty to disallow them, and to hold the Postmaster General a debtor to the Government for the amount. In the case of moneys paid for additional allowances, a rule is given by the act of Congress, which the accounting officers may and ought to apply to every credit of this nature claimed in the account. If they discover that the rule prescribed by law has been violated in the allowance, I do not see how they can pass the payment to the credit of the Postmaster General, without a palpable dereliction of duty.

If this view of your responsibility in the accounting office be correct, there would seem to be little room for doubt as to your right to inquire into the grounds on which the unconsummated orders in question have been made, and to affirm or reverse them, as the law and justice of the case shall in your judgment require.

For each of these reasons separately, and for both combined, I am satisfied, that the answer above given to your first query is the only one which can properly be made to it.

II. The answer to be given to your second question depends partly on the terms of the contract made in this case, and partly on the construction which shall be given to the 43d section of the act organizing the General Post Office.

The contract, as you state it, is "*to carry the mail of the United States*," without any stipulation in favor of either party as to its weight.

Under such a contract, I apprehend that the contractors are bound to convey the whole mail accruing between the termini named in the contract, or coming into it from other routes according to the arrangements contemplated when the contract is made, as such mail may chance to exist from time to time, and at all times, during the contract. They are bound to remember, when the contract is for so long a period as four years, that the mail will naturally increase in weight during the term; and it is therefore to be presumed, that their proposals are made with reference to such increase. Upon any construction of the 43d section, which the words will bear, I

do not see how the increased weight of the regular mails from Washington and Baltimore to Wheeling, as above defined, can be considered as an "*additional service*," within the meaning of that section. If the weight of such regular mails has been increased, during the existence of this contract, to an extent which could not reasonably have been foreseen at the time when the contract was made, there may be just ground for appealing to the liberality of Congress for a special allowance; but it is very plain the Postmaster General cannot make any such allowance without a palpable infraction of the 43d section. The "*additional service*" provided for in that section, must have been "*required*" by the Postmaster General, as something beyond and out of the original contract; whereas this service is the very thing which the contractors, at the very beginning, engaged to perform. The additional compensation to be allowed for such new service cannot exceed "*the exact proportion of the original amount to the additional duties required;*" but as the original amount has no reference to the weight of the mails, it is impossible to make any such comparison as to ascertain any such proportion as the law demands.

I am not so well satisfied that an allowance might not lawfully be made for an increased weight of the mail, so far as such increase was occasioned by the turning into this mail, after its speed was accelerated, of other and additional mails from slower routes, not expected to be carried in it when the contract was made. The observations quoted by you from the report of the committee of the House of Representatives, "that the obvious and natural result of giving an accelerated speed to any one route, is to attract to it packages from slower routes; and that this also is one of the consequences which ought to be foreseen by the contractors, if they think it important, [and] guarded against in their proposals," is probably correct, provided the contractors are also bound to know, that the department will leave the other mail routes in their then existing state. But may they not reasonably presume, that the same desire to promote the public accommodation, which prompts the department to give increased speed to the mail on *one* of the great routes, will also induce it to give a correspondent increase of speed to all the other great routes?

And is there not some plausibility, to say the least of it, in the argument, that when the party contracted to carry the mail of the United States from Washington and Baltimore to Wheeling, he and the department must both have intended *the usual and regular mail, according to the course then pursued, or expected to be pursued,* between those points; and that neither could then have contemplated the doubling or trebling of its weight by the diversion of an independent mail then carried, and expected to be carried, on a different route? And if such was really the understanding of the parties when the contract was made, may we not say, that when the Postmaster General directed the mail from the Philadelphia

and Pittsburgh route to be conveyed by these contractors, he required of them "*an additional service*," and one for which they were justly entitled to "*additional compensation?*" I am so strongly inclined to answer these questions in the affirmative, that I should probably give them such a reply, did I not perceive another difficulty in the way. As I have already suggested, the 43d section forbids any additional allowance in any case in which the additional service required cannot be compared and measured with the original amount; and even, therefore, if it were admitted that the service in question was an *additional service* within the spirit of the law, it would yet be excluded from its benefits, because it is utterly impossible to make the comparison, and to ascertain the proportions which are indispensable to bring the case within the terms of the provision. There is, therefore, no remedy, except by an appeal to Congress; but if the facts are correctly stated by the contractors, it appears to me they have strong claims on the justice of Congress for a liberal allowance in this respect.

There are one or two other remarks on this branch of the case which are necessary to put you fully in possession of my views in relation to it.

1st. Where the contract is to carry the mail in a particular vehicle, and by a particular number of horses, and the mail, during the continuance of the contract, becomes so far increased in weight, either by the increased business done on the original route, or by attracting packages from other routes, that it cannot be carried in the vehicle and by the horses mentioned in the contract, but an additional vehicle, or an additional horse or horses, become necessary, and are therefore required by the department, is an "additional service," for which a proportionate allowance may lawfully be made.

2d. Although no particular vehicle or number of horses be mentioned in the contract, yet, if the mode of conveyance and the strength to be employed were mentioned in the proposals, or were otherwise clearly understood by the parties when they entered into the contract, I think the case may well be considered as standing on the same ground with the one just mentioned.

You will observe that I speak without reference to passengers. So long as the mail can be conveyed in the vehicle and by the force specified in the contract, or otherwise contemplated by the parties, I think the contractor is bound to carry it, even though it may compel him to diminish the number of his passengers, or even to exclude them altogether; unless the right to carry, at all times, a certain number of passengers is specifically reserved to him in the contract.

As I understand the present case, the mail was never increased to so great an extent but that it could be conveyed in the vehicle and by the force contemplated in the contract; and on this supposition I answer your second question, with the qualifications above

stated, in the negative. If, however, I am wrong in this impression, and you concur in the two suggestions just made, you can readily apply them as the facts and justice of the case may require. On the other hand, if I am right as to the fact, and have taken a correct view of the general powers and duties of your department, and of the forty-third section of the act concerning it, it will follow, that the order of the Postmaster General, authorizing an additional allowance for the increased weight of the mails, was *void from the beginning*, because made in contravention of the section referred to. And, unless Congress make provision to the contrary, it will also follow, that the order in question cannot protect the contractor in the retaining of public moneys supposed to have been paid, or even actually paid, on this special account. As the case now stands, and on the principles of the foregoing opinion, all such moneys, whether paid before or after the issuing the order, having been paid by the department and received by the contractors contrary to law, may be recovered back in an appropriate suit to be instituted for the purpose.

I have the honor to be, with high respect, your obedient servant,

B. F. BUTLER.

To the Hon. AMOS KENDALL,
Postmaster General of the U. States.

Letters from defendant to plaintiffs, May 11th, 1835, to June 4th, 1836, inclusive, referred to in defendant's 2d bill of exceptions, marked (d 1, page 49.)

POST OFFICE DEPARTMENT, *May 11th*, 1835.

STOCKTON & STOKES, *Baltimore, Md.:*

GENTLEMEN: The Postmaster General instructs me to say, that the department will renew, with condition, for the performance of your contracts, the acceptances you have obtained; provided it shall appear that there will be due to you for regular pay, exclusive of the allowances—the payment of which, you have been informed, is suspended—so much as will meet the drafts at the time they shall fall due.

Respectfully, your obedient servant,

P. S. LOUGHBOROUGH.

POST OFFICE DEPARTMENT, *May 14th*, 1835.

JAMES REESIDE:

SIR: The Postmaster General directs me to inform you that he has ordered the payment of the allowances to you, of which you have a note annexed, to be suspended.

Regretting the necessity of resorting to this step, he directs me to say that, in the present circumstances of the department, he finds it a duty, the performance of which is indispensable, to enable

him to devote the means of the department to the discharge of the regular pay due to contractors, the demands for which should not be postponed to those for allowances.

The conclusion to which the Postmaster General has come has no reference to the nature or merits of the claims, the payment of which is suspended.

No question respecting these has been discussed or considered.

The acceptances obtained by you will be paid when they become due, provided the amount be due to you under your regular contract allowances. If this shall not be the case, then the department agrees to renew them, with condition for the performance of your contracts, provided it shall appear that there will be due to you for regular pay, exclusive of the suspensions now directed, so much as will meet the drafts at the time they become payable.

Your attention to this is requested.

Respectfully, your obedient servant,

P. S. LOUGHBOROUGH.

No. 231. For carrying the mail guard from New York to Philadelphia, from January 1st, 1828, to January, 1832 - - - - - - -	$8,760 00
No. 951. For same, from January 1st, 1835, to March, 31st, 1835 - - - - - - -	540 00
No. 425. For same, from New York to Hartford, and from Hartford to New York, from 1st January to 1st March, 1835 - - - - -	540 00
For sundries on routes Nos. 951 and 425, from 1st January, 1833, to 31st December, 1834 - -	16,951 50
No. 2,352. To James Reeside & Co. for running great mail on direct road and two-horse stages, 3 trips per week, from Warrenton, by Powelton, to Sparta, 26 miles, from 1st February, 1833 - - -	3,125 00

POST OFFICE DEPARTMENT, *May 14th*, 1835.

C. P. MALLETT:

The same as last letter on preceding page, with the following note annexed.

P. S. L.

No. 2,104. "For increased expenses by alteration of schedule," from 1st July, 1832, $325.

CONVERSE & REES 14.

The same, with the following note annexed:

No. 1,451. "For surplus of expenses," &c., from 5th March, 1832, to 1st July, 1833, $8,666 33.

Duplicates sent to Parkman and Ashtabula, O., on 20th June.

STOCKTON & STOKES 14.

The same, with the following note enclosed.

	P. S. L.
Routes 1,201 and 1,389. To Stockton & Neil, 50 per cent. on pay from Baltimore to Wheeling - -	$19,254 00
Together with the entire allowance depending on the same principle, said to be confirmed in February last	43,321 50
Nos. 1,371 and 1,372. To R. C. Stockton, for additional daily line, in winter of 1833–'4, from Baltimore to Philadelphia, and from Baltimore to Washington - - - - - -	16,200 00
Same for 1834–'5 - - - - -	16,200 00
To same, for sundries, extending from September 30, 1831, to March 31, 1833, inclusive - - -	6,423 46

L. W. STOCKTON 14.

The same, with the following note annexed.

	P. S. L.
Routes 1,201 and 1,389. To Stockton & Neil, 50 per cent. on pay from Baltimore to Wheeling - -	$19,254 00
Together with the entire allowance, depending on the same principle, said to be confirmed in February last	43,321 50

POST OFFICE DEPARTMENT, *Nov.* 4, 1835.

STOCKTON & STOKES, *Baltimore, Md.:*

Your draft for $10,400, dated 23d April last, has this day been presented by the U. S. Branch Bank and paid. Your check on the Franklin Bank of Baltimore, for $10,400, dated November 6, *and* will be deposited in the Bank of the Metropolis to-morrow for collection.

Your draft for $5,000, dated 23d July last, and payable on the 1|4 November, has also this day been presented by the Bank of the Metropolis.

By the written agreement of R. C. Stockton, made in May last, it is provided, "that the Post Office Department does not bind itself to pay them (the drafts) unless there shall be a sufficient sum due to me, excluding the allowances "suspended." According to this agreement, the present state of your amounts would not permit the payment to be made; but as Mr. Stokes did not mention this draft

when in Washington last, the Postmaster General has been induced to think that it may have been overlooked by you, and therefore ordered it to be paid, for the purpose of saving your credit in the banks. He also directed that I should inform you of the payment of this draft, and require an immediate deposite by you of $5,000 to the credit of this department. The deposite may be made either in the Bank of the Metropolis or the Franklin Bank of Baltimore. When made, please to send on certificate that it has been received by the bank in which it is made.

(Signed) R. JOHNSON.

POST OFFICE DEPARTMENT, *January* 26, 1836.

STOCKTON & STOKES, *Baltimore:*

Your letter of yesterday, stating that your drafts for $23,400, with the conditional acceptances of the department, would be due at different banks in your city on the 1st and 4th February next, and asking acceptances at 90 days to renew them, has been received.

The protest of your drafts, with my acceptances, in the Bank of the Metropolis, interposes an obstacle to the granting of your request which I know not how to surmount. It appears to me that I cannot justify myself to the bank in which you may attempt to negotiate any acceptances which may now be given, unless I were to apprize them of the state of things existing here.

It would be extremely gratifying to me if *all* the acceptances in your favor could be renewed, and I am inclined to think that object could now be effected in the bank here. If it can be, I should not hesitate to renew those in Baltimore.

A. KENDALL.

POST OFFICE DEPARTMENT, *June* 4, 1836.

STOCKTON & STOKES, *Baltimore:*

Your letter of the 2d instant came to hand yesterday.

No further payments can be made on account of J. N. C. Stockton or Ward Taylor, advances having already been made, by special dispensation of the rules of the department, as far as would be just or proper. Moreover, J. N. C. Stockton, as I am informed, has received an advance of 5,000 dollars, under an arrangement with the postmaster at Mobile, for the temporary conveyance of the New Orleans mail, which, for want of legal authority, I cannot sanction. Mr. Plitt, the agent of the department, now in that quarter, has been instructed to confer with him, and make such an arrangement, within the legal authority of the department, as emergencies may require.

Ward Taylor has been advised that he must receive his pay upon his route, the department having abundant funds at Montgomery and Mobile, which, if not paid to him, must be transferred. As

we cannot continue to some favors which we deny to others, I must insist on his ceasing to ask for payment here.

Further, in the case of J. N. C. Stockton, the contracts have not been executed, and nothing but your peculiar circumstances has induced me to make any payments upon them whatsoever. I cannot justify myself to the country, if I suffer this omission long to continue.

I regret that the proposition for your relief has not been pressed to a final decision in Congress. There will be no difficulty in paying, within sixty days, the whole amount suspended in your account, if that body shall so direct; and if they do nothing, I shall feel it my duty, after their decision has been given, to make a final adjustment of your old accounts, in which a considerable sum will probably be brought to your credit. But you are aware that acceptances in your favor have been protested for a large sum; and although the acceptance of the department creates no legal obligation, it does create an obligation in honor and morality to do all within our power to secure payment to the holders. Unless, therefore, there be an arrangement of those claims, I shall feel bound to pay, to the holders of the papers having on *it* the acceptance of the department, the money which may be found due to you, until they be discharged.

Your honorable bearing towards the department, under trying circumstances, has inspired me with a desire to relieve you to the extent of my legal authority, and to the limits of justice; but there are bounds which no public officer may pass, and stand acquitted to his conscience and his country.

A. KENDALL.

I certify that the foregoing transcripts are true and correct copies from letter books in this office.

In testimony whereof I have hereunto subscribed my name, and caused to be affixed the seal of the Auditor of the Treasury for the Post Office Department this nineteenth day of December, 1840.

C. K. GARDNER,
Auditor of the Treasury for the P. O. Dep't.

Copy of a letter from Hon. Virgil Maxcy, Solicitor of the Treasury of the United States, to Hon. Amos Kendall, Postmaster General of the United States, referred to in defendant's 2d bill of exceptions, marked (e 1,) *page* 49.

OFFICE OF THE SOLICITOR OF THE TREASURY,
December 21, 1836.

SIR: In the careful review which I have made of Messrs. Stockton & Stokes' accounts, in preparing my report for Congress, I have discovered a clerical error in my first award of November 12th, which I ask the favor of you to cause to be corrected, although it does not affect the result. The error is in stating the al-

lowance which I have made for services between the 1st April and 31st December, 1835, to be $6,715 50 per quarter, instead of $8,954 per quarter.

I have also to request you to cause my award of the 23d of November last to be corrected, excepting from allowances the four items of claim in the account presented for allowance by the contractors following the first act, $1,240, numbered in the award 2, 3, 4, and 5. I have come to the conclusion, on revision, that No. 2 had already been allowed in the above mentioned sum of $1,240, and No. 3 in that of $1,860, credited in Stockton's general amount; and that Nos. 4 and 5, though probably just, are not sufficiently sustained by the vouchers presented by the contractors. These several items amount to $1,163 16, which take from $11,503 16, the amount of the award upon this amount, leaves the corrected amount $10,340.

I have the honor to be, with great respect, sir, your most obedient servant,

V. MAXCY,
Solicitor of the Treasury.

To the Hon. AMOS KENDALL, *Postmaster General.*

Copy of bills of expenses and losses referred to in defendant's third bill of exceptions, marked A, page 57.

WM. B. STOKES and others, survivors of R. C. Stockton, vs. AMOS KENDALL.	In the circuit court, District of Columbia.

Andrew Stewart, of Uniontown, Pennsylvania, being sworn, saith, that he has attended here since the 22d instant, in obedience to summons served on him at Uniontown on the 18th instant, to appear and testify on behalf of the plaintiffs in the above case.

He further states, that he was employed as counsel, by the plaintiffs in the above case, in 1835, to aid and assist them in the recovery of large sums of money which they alleged were due and owing to them for services rendered under contracts made with Wm. T. Barry, former Postmaster General, for the transportation of the U. S. mail, and which had been withheld from them by Amos Kendall, the successor of the said Wm. T. Barry; that this deponent accordingly, not only aided them with his advice and services at Uniontown and elsewhere, but crossed the mountains four or five times, from Uniontown to Washington city, on said business, in 1835, '36, and '37, viz: in December, 1835, January and June, 1836, and January and February, 1837, to assist them to obtain acts of legislation for the allowance and payment of said claims, and afterwards in carrying the same into execution; that for his advice, assistance, and services so rendered, as well as to compensate him for his time and expenses incurred in the prosecution of said claims as aforesaid, he received from the plaintiffs above named,

at different times, the sum of one thousand dollars, in full for his services in the premises. That the deponent further knows that the plaintiffs (except Daniel Moore) attended personally in Washington city, on the business above mentioned; that L. W. Stockton, one of the plaintiffs, who resides in Uniontown, Pa., crossed the mountain frequently with this deponent to attend to the prosecution of said claims on the Post Office Department, and remained in this city for weeks together attending to the same.

ANDREW STEWART.

Circuit court, November term, 1840.

On this 24th day of December, 1840, the honorable Andrew Stewart appeared in court, and made oath, in due form of law, that the above statement or affidavit signed by him is true.

Test: WM. BRENT, *Clk.*

It is agreed, on the part of the defendant in the above named cause, to admit in evidence in said cause this affidavit, so far as it may be deemed relevant to the issue.

H. H. DENT.

Reverdy Johnson and Jno. Glenn's receipts for moneys paid them, and referred to in defendant's third bill of exceptions, marked B, page 57:

The amount which I received from Messrs. Stockton and Stokes, for my professional services in the matter of their claim against the Post Office Department, during the administration of that department *of* honorable Amos Kendall, was four thousand dollars, besides the payment of my expenses for several weeks in Washington during the period of these services; what these were I have no knowledge, but the books of Messrs. Gadsby & Newton, where I staid, will show them. The compensation paid me was not by the parties applied to my services for them, but in my own mind I had estimated my trouble, time, and assistance to them, when their memorial for the enactment of the act of Congress, by which their demand was referred to the Solicitor of the Treasury, was before a committee of the Senate, at one thousand dollars, and my services in the mandamus case, in the circuit court of the United States for the District of Columbia, and in the Supreme Court of the United States, at three thousand dollars. What portion of the amount paid me, if any, was advanced by any other persons than Messrs. Stockton & Stokes, I know not.

REVERDY JOHNSON.

BALTIMORE, 30*th December*, 1840.

Messrs. Stockton & Stokes paid me for my services, in reference to their claims against the Post Office Department, the sum of one thousand dollars. This was for all my services in relation to this

claim—for argumentative memorial to Mr. Kendall, a visit to him, for attendance before Congress, and other services connected with this business, which I cannot now particularize.

They also paid me for Reverdy Johnson, esquire's services four thousand dollars, which I paid over to him.

JOHN GLENN.

BALTIMORE, 30*th* , 1840.

Travelling expenses of Lucius W. Stockton, referred to in defendant's 3d bill of exceptions, marked C, page 57.

Amount of expenses of L. W. Stockton, from May, 1835, to March, 1838, attending to the business caused by the suspension, by Amos Kendall, of certain claims for services rendered the Post Office Department, viz:

In year 1835, from May to December 31, travelling expenses from Uniontown, Pa., to Washington city, four times and back, four times to Uniontown, (*not* including bills in Washington city for board, &c.) at $30 each time, (4 times,) distance 400 miles down and up (each) - - - -	$120 00
To ditto, in year 1836, five times - - -	150 00
To ditto, in year 1836, between Washington city and Baltimore, 6 times - - - - -	35 00
Travelling expenses in year 1837, between Uniontown and Washington city, as in first item, three times, 1837 - - - - - -	90 00
Same as last item, 3 times between Washington city and Baltimore, 1837 - - - -	17 50
And for travelling expenses in December, 1840, and from Uniontown to Washington city and back -	30 00
	442 50

National Hotel expenses, referred to in defendant's third bill of exceptions, and marked D, page 57.

Memorandum of bills as paid by L. W. Stockton, esq.

1835, May	29	Then paid National Hotel	- -	$14 78
Nov'r	25	Do.	do.* - -	23 76
Dec'r	20	Do.	do. - -	8 82
1836, Jan'y	17	Do.	do. - -	36 94
Feb'y	1	Do.	do. - -	24 84
March	17	Do.	do. - -	4 88
July	2	Do.	do.† - -	63 82
Sept'r	15	Do.	do. - -	45 47
Oct'r	29	Do.	do. - -	25 28
Dec'r	1	Do.	do. - -	81 58
1837, Feb'y	20	Do.	do.‡ - -	267 25
July	23	Do.	do.§ - -	118 63
1838, Oct'r	7	Do.	do.§ - -	70 93
1839, March	5	Do.	do.§ - -	154 88
				941 82

* Pusey & Stockton.
† Continued from March to July.
‡ Paid by Stockton & Stokes' draft.
§ Paid by S. in a draft of above last date.

Mem'dum of amount as paid to National Hotel by R. C. Stockton, esq.

1835, May	14	Then paid this amount	- -	$21 00
June	3	Do.	do. - -	59 78
	18	Do.	do. - -	16 00
Oct'r	25	Do.	do. - -	89 44
Dec'r	6	Do.	do. - -	3 56
1836, Jan'y	9	Do.	do. - -	0 00
April	10	Do.	do. - -	24 13
	14	Do.	do. - -	39 62
	29	Do.	do. - -	30 00
May	16	Do.	do. - -	17 32
June	2	Do.	do.* - -	128 74
				429 59

* This bill was continued from May to date.

Memorandum of amount as paid by Mr. Stokes.

1836, Sept'r 30	Then paid to National Hotel this amount	$7 25
1837, Feb'y 1	Do. do. -	9 63
March 4	Do. do. -	6 26
		23 14

Memorandum of amount as paid by Mr. Falls.

1839	Then the amount paid stood thus, from May, 1835, and was then paid by a draft - - -	$141 62 141 42
		283 04

	$941 82
	429 59
	23 14
	283 04
	1,677 59
Reverdy Johnson's expenses -	677 64
Present expenses—1840–'1 - -	225 48
Sum total - -	2,580 71

Discounts paid by S. Stokes on post office acceptances, and interest on moneys borrowed by them to enable them to prosecute their business, from 1st May, 1835, to 9th November, 1836 - - - - -		$9,749 24
This is *not entitled* to credit by interest paid Post Office Department, because that interest was applied to the drafts which had been accepted by the department, and was paid out of the award - - -		
Counsel fees—Johnson - -	$4,000	
Cox $2,000, Clark $2,000 - -	4,000	
Key $1,000, Stewart $1,000, Glenn $1,000	3,000	
		11,000 00
Bill of expenses at National Hotel in '35, '36, '37, and '38 - - - - - - - -		

Interest on $40,000, from 23d November, 1836, to 1st April, 1838 - - - -	$3,460	
To be credited by this sum paid in the suit upon Kendall's bond - - - -	950	
		2,510 00
Travelling expenses—October, 1837, one month's full pay on the route from Baltimore to Washington, required by them of the contract, at $12,000 per annum - - - - - -		2,00 00

Appeal to the Supreme Court.

And whereas, afterwards, to wit, on the twenty-first day of October, in the year of our Lord one thousand eight hundred and forty-two, the said Amos Kendall, by his attorney aforesaid, produced and filed in court here, the United States writ for the correcting of errors, of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereto annexed, is hereby transmitted to the said Supreme Court accordingly.

Clerk's certificate and seal.

In testimony whereof, I have hereunto subscribed my name
[L. S.] and affixed the seal of said court, at the city of Washington, this 28th day of December, 1842.

W. BRENT, *Clerk.*